United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 12,525

CIVIL.

CARL WILHELM BAUMGARTNER, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED FEBRUARY 6, 1943.

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[fol. 1] United States of America,—Sct.:

Be it remembered that heretofore, to-wit, at the regular April term of the United States District Court for the Western Division of the Western District of Missouri, and on the 21st day of August, 1942, there was filed in the office of the clerk of said court a Complaint in the cause wherein United States of America is Plaintiff and Carl Wilhelm Baumgartner is Defendant.

Said Complaint is as follows:

[fol. 2] Complaint.

In the District Court of the United States of America for the Western District of Missouri, Western Division.

United States of America, Plaintiff,
No. 1278. vs. Civil Action.
Carl Wilhelm Baumgartner, Defendant.

The United States of America, by Maurice M. Milligan, United States Attorney for the Western District of Missouri, herewith presents its complaint under and pursuant to Section 338 of the Nationality Act of 1940, 54 Stat. 1158 (U. S. Code, Title 8, Section 738), against Carl Wilhelm Baumgartner, and respectfully represents:

1. That the said Carl Wilhelm Baumgartner was, prior to the 26th day of September, 1932, a native and citizen of The German Reich.

2. That the said Carl Wilhelm Baumgartner entered the United States on the 9th day of February, 1927, under the name of Karl Baumgarten, and now resides at Kansas City, Jackson County, Missouri, within the Western District of Missouri, and within the jurisdiction of this court. That the said Carl Wilhelm Baumgartner and the said Karl Baumgarten are one and the same person.

3. That on the 16th day of May, 1932, the said Carl Wilhelm Baumgartner filed his petition for naturalization, No. 6197, in the United States District Court for the Western Division of the Western District of Missouri, in which said petition for naturalization the said Carl Wilhelm Baumgartner represented and set forth under oath as required by law, among other things as follows:

[fol. 3] I am attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. It is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to The German Reich, of whom (which) at this time I am a subject (or citizen), and it is my intention to reside permanently in the United States.

4. That thereafter on to-wit, the 26th day of September, 1932, the said Carl Wilhelm Baumgartner took the following oath of allegiance in open court as required by law:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to The German Reich of whom (which) I have heretofore been a subject (or citizen); that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help Me God. In acknowledgment whereof I have hereunto affixed my signature.

5. On the same date, to-wit, the 26th day of September, 1932, the said United States District Court, at Kansas City, Missouri, for the Western District of Missouri, relying on the truth and good faith of the representations made by the said Carl Wilhelm Baumgartner in his petition for naturalization and in his oath of allegiance, entered its order admitting him to citizenship in the United States and thereupon certificate of naturalization Number 3532623 was issued to him by the Clerk of said Court.

6. That all of the representations aforesaid made by the said Carl Wilhelm Baumgartner in his petition for naturalization were false and fraudulent in that he was not in fact attached to the principles of the Constitution of the United States at the time of the filing thereof nor during the five years prior thereto; in that he did not in good faith intend to renounce absolutely and forever all allegiance and fidelity to The German Reich of which he was then a subject but in fact intended to retain allegiance and fidelity to the said German Reich; and in that he did not in fact intend to reside permanently in the United States.

[fol. 4] 7. That all of the representations aforesaid made by the said Carl Wilhelm Baumgartner in his oath of allegiance were likewise false and fraudulent in that he did not in fact renounce and abjure all allegiance and fidelity to the said German Reich; in that he did not in fact intend to support the Constitution and laws of the United States of America against all enemies, foreign and domestic; and in that he did not in fact intend to bear true faith and allegiance to the same, but in fact did intend to remain a subject of The German Reich and to maintain his allegiance thereto.

8. That the said certificate of naturalization was procured by the said Carl Wilhelm Baumgartner fraudulently and illegally and for the purpose of obtaining the rights, privileges and protection of American citizenship without intending to assume the duties thereof, and that said certificate of naturalization is subject to cancellation.

9. That pursuant to Section 738, Title 8, U. S. Code, and on the 21st day of August, 1942, an affidavit showing good cause for the institution of proceedings for the purpose of revoking and setting aside the order admitting Carl Wilhelm Baumgartner to citizenship and cancelling his certificate of naturalization on the ground of fraud and on the ground that such order and certificate of naturalization were illegally procured: was filed with the office of the United States Attorney for the Western District of Missouri, at Kansas City, Missouri, which said affidavit is attached hereto, marked exhibit "A" and made a part hereof.

Wherefore, it is prayed that an order be entered revoking and setting aside the aforesaid decree of naturalization, cancelling the said certificate of naturalization and directing the surrender of said certificate of naturalization to the Clerk of this Court; and that the defendant be forever restrained and enjoined from claiming any right, [fol. 5] privilege, benefit or advantage whatsoever under said certificate of naturalization; and for such other further relief as may be proper.

MAURICE M. MILLIGAN,
United States Attorney.

Western District of Missouri,
Western Division,
Jackson County, Missouri,—ss.:

Charles L. King, being first duly sworn on his oath says that he is one of the Attorneys for the plaintiff in the above entitled cause, that he has read the foregoing complaint and that the facts stated therein and the allegations contained therein are true according to his best information and belief.

CHARLES L. KING,
Assistant United States Attorney.

Subscribed and sworn to before me this 21st day of August, 1942.

(Seal)

A. L. ARNOLD, Clerk.
By H. C. Spaulding,
Deputy.

[fol. 6] Exhibit "A."

Affidavit

State of Missouri,
County of Jackson,—ss.:

J. W. Menzie, of lawful age, and being duly sworn deposes and says:

That he is a Special Agent of the Federal Bureau of Investigation of the Department of Justice of the United States.

That pursuant to his duties as a Special Agent of the Federal Bureau of Investigation, he the said J. W. Menzie, did on or about May 23, 1942, enter upon an official investigation of one Carl Wilhelm Baumgartner, of Kansas City, Jackson County, Missouri.

That he did thereafter conduct an official investigation of the said Carl Wilhelm Baumgartner, which said investigation covered the period of time from February 9, 1927, to and including the date of this affidavit.

That in the course of said investigation he has examined the official records of the United States Department of Justice and more particularly the records of the Immigration and Naturalization Service and the Federal Bureau of Investigation, each being a department of the said United States Department of Justice; with reference to the entry of the said Carl Wilhelm Baumgartner into the United States on February 9, 1927, and the filing of a petition for naturalization by the said Carl Wilhelm Baumgartner on May 16, 1932, in the United States District Court of the Western District of Missouri, and the issuance of certificate of naturalization No. 3532623 to the said Carl Wilhelm Baumgartner by the United States District Court at Kansas City, Missouri, on September 26, 1932; that as a Special Agent of the said Federal Bureau of Investigation, he the said J. W. Menzie, has conducted an investigation of the activities, places of residence, places of employment, business and social associations, statements, utterances and acts of and made by the said Carl Wilhelm Baumgartner during the period of time beginning February 9, 1927, to the date of this affidavit.

Carl Wilhelm Baumgartner was born in Kehl, Germany, January 20, 1895, and was educated at a university located at Darmstadt, Germany. During the first world war he enlisted in the German army in 1914, and in 1917 received a commission as a 2nd Lieutenant. Soon thereafter, he was captured and held as a prisoner of war in England, until about November, 1919, at which time he returned to Germany and persued his studies as an engineer.

He came to the United States on February 9, 1927, landed at New York City, New York, on the vessel Hamburg.

Previously he had been married on January 20, 1927, at Darmstadt, Germany, to his present wife, Elizabeth Weiss Baumgartner, who arrived at New York City, New York, in August, 1927.

[fol. 7] The said Carl Wilhelm Baumgartner then went from New York City to Murphysboro, Illinois, where he visited the Alphonse Gebhardt family for approximately three months, after which time he came to Kansas City, Mo., where he was joined by his wife. He worked for a while with the American Radiator Company, and in about August, 1927, he received a position with the Kansas City Power and Light Company and is presently employed by that company in the capacity of a laboratory engineer.

He is now the father of three children, Edith, age 12, and twins, Carl and Dorothy, age 8, and his children were all born in Kansas City, Missouri.

In May, 1939, the aforesaid wife and children of Carl Wilhelm Baumgartner returned to Darmstadt, Germany, which was the residence of his wife's parents. She has not to this date returned to the United States.

In the early 1930's he was a subscriber to the "Berliner Illustriete Zetung," a pictorial review published in Berlin. He subscribed to this newspaper for general informational purposes and held the subscription for about three years. He also subscribed to a professional magazine published in Berlin, the "Elektrotechnische Zeitung", and continued this subscription until about 1937. In the fall of 1939 he received the publication "Facts in Review", which was put out by the German Library of Information, until it discontinued its operations.

That the said Baumgartner, on or about May 1, 1939 became one of the signers of a petition circulated in the vicinity of Kansas City, Missouri, by a German Vice Consul protesting against the exhibition of the motion picture entitled "The Confessions of a Nazi Spy." The said petition was signed by 138 persons and is on file with the office of the city censor, City Hall, Kansas City, Missouri. That in an interview he admitted that he had signed this petition after viewing the film for the reason that in his opinion the picture spread untruths about the activities

of German societies in the United States, and he believed the picture would serve to cause American people to develop the wrong attitude towards German-American Societies.

The said Baumgartner formerly resided at 5329 Olive Street in Kansas City, Missouri, until May or June in 1939, at which time he sent his wife and three children to Germany, when he then took up his residence in Kansas City, Missouri, at 5925 Cherry Street. On or about September 1, 1939, he stated that he had no intentions of returning his family from Germany to the United States and further stated that his family was as safe in Germany as they were in this country. In the Spring and Summer of 1939 he is known to have repeatedly made statements praising the militaristic feats and successes of Adolph Hitler and Nazi Germany. Sometime in 1938 he became a Sunday School teacher of a boys' class at the Country Club Congregational Church, Kansas City, Missouri, and continued until the summer of 1939, and during that time and while teaching the said Sunday School class he continually praised the militaristic feats and successes of Adolph Hitler and Nazi Germany, and confined his talks [fol. 8] to the Sunday School class almost exclusively to this subject until the summer of 1939, at which time he was requested to resign as a teacher of the boys' class.

Carl Wilhelm Baumgartner with his family resided at 5329 Olive Street from 1931 to about 1938, and while residing at this address he made frequent week-end trips out of the city, and is known to have stated that he was an organizer for the German Bund and that he received money from the German government to finance his trips and activities. He is known to have made the statement that "some of these days Hitler will make his home in New York City, this country will be over-run by Germans. The American people don't know how to run a government". He is also known to have stated that the German government would send to their operators in this country an empty revolver shell as a first warning if they were not getting results in what they were supposed to do, and that the next warning would be a loaded revolver shell, the third and final warning would be a silver bullet, and, he further stated that this was for the purpose of commit-

ing suicide if the operator had failed in his assignment. He is known to have stated "I have never received my first warning."

In 1937 and in 1938, the said Baumgartner stated that the German people were leading an ideal life and that he could go back to Germany and obtain a job at any time, and that a more ideal situation existed in Germany than existed in the United States, and that at the same time he made mention of the word "Bund" in referring to German activities with which he was connected in Kansas City. At or about the same time he is known to have expressed his sympathy for the German cause and stated that he was a strong believer in German superiority.

He is known to have stated that shortly after his wife and children returned to Germany that he received a cable from her stating that she wanted to come back to the United States and that he told her to "keep her feet on the ground, that she was just as safe as she would be in the United States as long as she was not near the front fighting lines." That prior to the time Elizabeth Weiss Baumgartner left the United States for Germany she stated that she was returning to Germany and that if she liked Germany and if conditions were right, that Carl Baumgartner, her husband, was going to sell out in Kansas City, and go to Germany. Prior to leaving the United States, she is known to have made the statement that "I am full up to here of America", pointing to her neck.

It is known that in 1938, the said Carl Baumgartner made statements in the presence of witnesses indicating his strong sympathies for Germany, and indicating his belief that Hitler, was the man who was saving Germany, and that shortly before the United States entered into the war he was asked the question if the German people were behind Hitler, and his reply was "why, there isn't a shadow of a doubt." It is also known that at the time when Germany invaded France, that he remarked that there was nothing in the world that had ever been accomplished like that.

[fol. 9] It is a known fact that as far back as 1931 the said Carl Baumgartner often remarked that Germany was superior to the United States and that he talked many times of Germany and manifested his pride in the German race and the cultural development of Germany. At this time he is also known to have praised the existing policies of Germany and Adolph Hitler.

That during the late summer or the early fall of 1939, a remark was made to the said Baumgartner to the effect that Hitler was "no good," and that in reply to this remark the said Baumgartner stated to the person making the remark that "if you are not for Hitler, you are a traitor to your country." That in 1927, when the said Baumgartner entered upon his employment with the Kansas City Power and Light Company, he worked on a repair truck for that company with two associates who were members of the American Legion, being veterans of world war one, and that while so employed he, the said Baumgartner talked continually of Germany and made many references to the superiority of the German race and that his remarks were so pronounced in favor of Germany that to avoid trouble the said Baumgartner was transferred from the repair truck and given other duties.

During the first part of 1941 upon being asked why he sent his wife and children to Germany, the said Baumgartner in substance replied that his children could be better educated in Germany and be brought up better there. That in the fall of 1941 upon being asked if he was going to send for his wife and children, he replied in substance that "not until after the war since I want them to come back on a German vessel."

Upon being advised that since his wife and children were residing in Germany that he too should return to that country, the said Baumgartner is known to have replied "well I don't have the money", and at a later time in response to being asked why he did not go back to Germany he replied in substance, "it's a long way and takes a lot of money."

In 1938, the said Baumgartner made the statement in the presence of witnesses that he had stayed up practically all night the night before listening to a four hour

speech made by Adolph Hitler in Germany. He remarked that Hitler's speech was "a very fine speech."

Affiant Further States:

That on May 27, 1942, while making a search of the hotel rooms of the said Carl Wilhelm Baumgartner, he discovered a Diary, or Daily Record Book, written in the German language and admitedly kept in the handwriting of the said Baumgartner. This Dairy contains entries made from day to day by the said Baumgartner during the period of time from December 1938, to July 1941, and relate therein for the most part to The German Reich, The Fuehrer—Adolph Hitler, the policies of said Hitler, the author's activities in Kansas City, Missouri, of his association with certain German-American Societies and Clubs and the membership thereof. Other references in the Dairy depict his strong sympathies for The German Reich and the policies of Adolph Hitler, and reflect his [fol. 10] deep rooted aversion to our own American ideals, and likewise positively show his contempt for the American citizens of German blood who consider the interest and welfare of the United States paramount to that of The German Reich. This Daily Record of events kept by him reflects that said Baumgartner was deeply interested in photography, that he constantly took pictures of points of interest in Kansas City, Missouri, and other places in the United States, and that he spent long evenings in developing his own films. A reading of this Diary discloses further, that the said Baumgartner made journeys from his place of residence during this period of time visiting the Wilson and Wheeler dams, and other noted National projects. This Daily Record kept by the said Baumgartner contains references to certain individuals in Kansas City, of German ancestry, whom he branded as being "cowardly" and "as coming out against Germany," and said Diary evidences the fact that said Baumgartner listened daily to short wave German broadcasts on his short wave radio set.

Affiant further states:

That the said Diary contains the following entry dated January 30 1939, which translated into English reads as follows:

"Today Adolph Hitler made his long-awaited Reichstag address. I heard the re-broadcast of this speech on the German short wave broadcast from 6 to 8 p. m. The reception was so wonderful that the entire speech could be clearly understood. The speech was very frank and clear, and I was somewhat surprised to see that the newspapers called it one of the most unwarlike which Hitler ever made. It impressed me as though this reaction had already been decided upon without consideration of what the contents of the speech might really be. The Jews and the Catholic Church were both sharply rebuffed."

That on or about February 25, 1939, Carl Baumgartner made the following entry into his Diary which translated in English reads as follows:

"At 8. [—] M., as the result of an invitation from Fritz Jardon, I went to the home of a certain Mr. Roesell (interior decorator) where the German Vocational League was meeting for a film performance. Since I wanted to see what sort of an organization this Vocational League was, I accepted, as I have said, Jordon's invitation as well as Gastreich's, who is also a member. There I met a young man from Germany, Felthauer, a graduate engineer, who is at present an exchange student at K. U. As far as I can remember some of the others present were: Mr. and Mrs. Reichers (?), the parents of Mrs. Jardon; Mrs. Jardon, Mr. and Mrs. Gastreich, Mr. and Mrs. Schulze, the hosts, Mr. and Mrs. Roesell, Mr. Martini with a young lady, and another three or four couples whose names I do not remember. There must have been about 20 to 25 people altogether. A certain Mr. Lagna (?) was there, too. Since he was the speaker at the meeting, I take for granted that he is the chairman of the organization. I had met Lagna before. Last year he had been mentioned as a prospective member of the Steuben Society, but he was not admitted since he was not a citizen. A few months ago I heard that he claimed that he was a citizen. Schwedlers told me that he had been a member of the Free Masons which is a somewhat unusual thing for a man who claims to be a champion of German ideas.

[fol. 11] This Mr. Lagna opened the meeting with national anthem, whereupon everyone naturally arose and as-

sumed the usual German stance with the arm extended to give the National Socialist greeting. I immediately had the feeling that something seemed to be wrong. This feeling grew stronger when Lagna, in his speech, painted the situation of the German Americans very black and stated that we could really do nothing except to have an occasional congenial get-together such as this one. In other words, we meet behind closed doors and darkened windows, sing the German national anthem courageously, give the National Socialist salute even more bravely, and then decide that we must all be nice and quiet, that we can do nothing, and that things might even get worse.

Later in the course of the evening I said to one of the men, whose name I do not remember and who wore the "D" insignia on his lapel, that in my opinion it was the duty of German American citizens to stand up on their two feet and fend off all attacks on Germany. Thereupon this cautious man replied that we could not do this since we might lose our jobs.—For the refreshments which were served later, beer, cold cuts, and potato salad, I, who was a guest, was taxed two dollars just like everyone else present. I do not think that this was quite right since even the members were somewhat astonished at this fee because admission to this meeting was supposed to have been free. This is just my comment however."

On Sunday, February, 19, 1939, the author of the aforementioned dairy made the following entry:

"I want to add that the Mottberg clique of the Turnverein wanted to forbid us to display the German flag next to the American at the Winter Aid fair. At a special meeting of the board of directors of the Turnverein, Nottberg was persuaded to give in whereupon Dr. Lyon, an English-American, resigned as director. The entire situation shows the sad condition of Germandom in various circles."

On Thursday, March 23, 1939, the said Baumgartner made the following entry in his diary which when translated reads as follows:

"Today I heard the radio broadcast of the entrance of Hitler into Memel. Dr. Neumann spoke and then Hitler

himself. The church bells could be heard during the entire broadcast. This ends another of the crazy doings of the western democracies."

[fol. 12] On March 29, 1939, the following entry was made in the aforementioned diary:

"Sachs came over in the evening to discuss the card party with me which the Steuben Society intends to hold in order to make some money for publicity for the National Council. Sachs is a good fellow and a good German who has not been Americanized, that is, ruined."

And again on March 30, 1939, the author of the diary made the following entry:

"Went to Nessels in the evening in order to make him a member of the Steuben Society if possible.

I could see immediately that I was dealing with the prototype of the weakminded German Philistine who knows only his own interests and who looks at the individual's obligations toward the community as something which he cannot understand. 'I did not bother with politics in Germany and I won't do it here either,' he said to me. He does not realize that here in this country he is living in a community of people who, at least theoretically, make participation in politics an obligation for everyone.

After this I went to Jardon for the same reason. He seems to think that the American citizen of German descent can do nothing better than to work to get political influence for the Germans. I think that he will become a Steuben member."

That on April 13, 1939, the entry made by Carl Baumgartner reads in part as follows:

"Today, I also sent a letter to Mr. North, the pastor of the Congregational Church, in which I told him that I was resigning from the Church. I gave him to understand that the reason for this was that the Christian churches, just as during the last war, were becoming agitators again who approved of everything which their own nations did and who called down the wrath of God upon their godless enemies. I also enclosed a check for the

remainder of my annual subscription and $3.50 as an Easter donation. Now I have worked for the church for four years as deacon and as Sunday School teacher and have supported the church financially during this time. According to this, I owe no one anything.

On Saturday, April 22, 1939, the following entry was made in Baumgartner's diary:

[fol. 13] "Gave Gastreich the $13.50 from the Winter Aid. The net profit was only about $85 altogether.

In the evening I went with Schwedlers to hear a talk by a German student in the Turner Hall. The speaker's name, I believe, was Schmitz, and as he told me, he had studied in Berkeley, California. He spoke about his experiences in a German work camp and of his two years in the army. As a soldier, he marched into Austria with the German troops. One cannot blame him for being so enthusiastic about the new Germany and for speaking so disdainfully about America in spite of the fact that he is probably acting contrary to instructions. . . .

The talk was very interesting, not so much from a general standpoint as from the consideration of the speaker himself who probably represents young Germany quite accurately."

On Friday, April 28, 1939, the author of the aforesaid diary made the following entry:

"Got up at 4:30 to hear Hitler's speech. There are no words to describe how wonderful it was."

On Saturday, May 6, 1939, the following entry was made by Baumgartner in the aforesaid diary:

"Went to Gastreich's office in the morning to get the ticket for Bobby ($221.50). Gastreich told me that a protest was being submitted to the city government against the film "Confessions of a Nazi Spy." He told me that he had called up Schwedler on Friday but that the latter had done nothing. He further told me that he and Kissenger (attorney) had gone to the present city manager, Zachmann, and that Zachmann had informed the city trustee, which had to be done. When I asked him whether anyone had seen the picture, he said no. He then asked me to come

to see him at 1 o'clock with Schwedler and Kissenger to discuss further steps.

In spite of the fact that I had work to do at home, I agreed and then went to Schwedler.

When we met at one o'clock, Kissenger was not there, so Gus Schwedler and I went to the Orpheum Theater in order to see the picture so that we would be able to discuss it. When we returned at 3:30 we went to Kissenger with Gastreich, and I told him about the contents of the picture so that he would be able to draw up a corresponding petition, for which we would then have to get a minimum of fifteen signatures."

On Sunday, June 18, 1939, the author of the aforesaid diary made an entry as follows:

[fol. 14] "Took Eysels and one of Mrs. Eysell's sisters to Excelsior Springs. I liked the town quite well. The Mrs. Hucke who was along is, although not quite anti-German, nevertheless, somewhat influenced by the American arguments on Hitler. Of course, Mrs. Eysell tried to excuse her sister. . . .

On Friday, September 22, 1939, the author of the aforesaid diary made the following entry:

"Received telegram from Bobby that she wants to come back and needs $600. With these six hundred dollars I found that it is difficult to find a friendship which goes above a hundred dollars.

I do not like the fact that Bobby wants to come back now. It is dangerous and, considering what might happen here, it is not a good idea either."

On Tuesday, November 14, 1939, the following entry appears in the author's diary:

"Stayed home in the evening to enjoy my German short wave set. The subject was Soldier-Comrades, and the reception was excellent."

On Wednesday, February 14, 1940, the author made the following entry in his diary:

"Went to the Turner Hall with Gus Schwedler and Benne in the evening. We went as a committee to meet

with the Turner Council and discuss the Turner Council's refusal to promise Vice Consul Gastreich the Turner Hall for the holding of the charity affair for needy Germans in America. The upshot of this was that the Turners proved themselves to be a frightened and cowardly bunch. The reason which they finally gave for their action was that the film "The West Wall" was a German propaganda film. Gus Schwedler's behavior angered me most of all because he tried to get out of the whole thing and put all the blame on Gastreich. Thank goodness, Benne was not like that and of the Turners, Kettler was not afraid to express his opinion either. Nottberg is cowardly, lying gossip."

On March 3, 1940, the author made the following entry in the aforesaid diary:

"Nothing special. Went to Riedels in afternoon and gave them one of the two V.D.A. calendars. To Schwedlers in the evening for supper and cards.

The reception of the German short wave programs is getting considerably better, which is something to be thankful for in view of the present very important events in [fol. 15] Europe and in the world. Summer Welles, Roosevelt's special ambassador, left Germany again yesterday in order to visit his allied friends in Paris and in London. In my opinion this was a thoroughly dishonest chess move and was undoubtedly correctly appraised in Germany."

On Thursday, March 14, 1940, the author of the diary made the following entry:

"Went to Steuben meeting in the evening. The discussion was very lively regarding the Turner Hall situation, the so-called "Round Table" organization, and various objections raised by Benne. In my opinion, Benne is not the man I at first took him to be. He is a jackass who blusters about like a bunch of firecrackers. He is the sort of fellow who after having gone forward a step, thinks about it very seriously and then takes two steps backwards as quickly as possible. "Not much good", as one says here.

Took Gastreich home in the evening."

On Monday, April 15, 1940, there appears the following entry in the author's diary:

"Went to the Turner Hall in the evening for a meeting of the "Bears" (a men's Turner group). Was accepted in the ranks of the Bears with the name Blitzbear."

On Friday, April 19, 1940, the author of the aforesaid diary made the following entry:

"When I arrived home tonight I found that this diary had been taken out of the secretary during the day and had been put back. Whether this was done for the purpose of reading it I shall probably know by tomorrow night. . . ."

On Sunday, April 21, 1940, the following entry in the diary was made:

"I am convinced now that they are reading my letters and other writings here. I shall have to take precautions therefore.

Took my Sunday morning walk around the airport for about an hour. Stayed home in the afternoon . . ."

On Saturday, July 27, 1940, the author made the following entry in his diary:

"Took Eysells to the August Eysells. It is strange how Mrs. August Eyssell talks about Hitler and Germany—the way most people talk about them here. Even Helen Eyssell, to whom I always thought Germany meant more than just an entertaining place to stay, today made it very evident that she was an "American" girl.

[fol. 16] On Sunday, July 28, 1940, the following entry in the diary was made by Baumgartner:

". . . Went to Riedels. This good man, who was always quite brave in his ideas about Germany, has also become extremely cautious since a Jew in his neighborhood called him a Nazi. I think that his two boys are partly responsible for this"

On Saturday, November 2, 1940, appears the following in the aforesaid diary:

"Took a walk to an unusual spot between Birmingham and Liberty Bridge, took pictures. . . ."

On Monday, November 18, 1940, the following entry was made in Baumgartner's diary:

"Went to Befferts in the evening. Both are ridiculously primitive and uneducated. They really feel at home in this country just like all other people of their type."

On Saturday, November 30, 1940, the following entry was made:

"(Paragraph 2) . . . Anton, my barber, told me that he had a room in mind for me with a certain Mrs. Lodde on 26th and Charlotte. Kettler also called to tell me that he had inquired at Hillers on 41st and Agnes. Hiller, however, is a superpatriot and I don't think it would be wise to move there."

On Tuesday, December 31, 1940, the following entry appears:

"Hitler's speech, the New Year's address to the German people, was an effective answer to Roosevelt's false and twisted statements. . . ."

On Thursday, January 16, 1941, the following entry was made:

"In the evening after calling for my radio, I went to Mehringers and then took Mehringer to the Music Hall to attend the meeting of the "America First" Committee. The official speaker was John T. Flynn. According to the K. C. Star, 650 people we there. Luhnow (?), Volker's nephew, seems to be the leader of this organization here."

On Tuesday, March 25, 1941, the following entry was made by the author in his diary.

"This morning I heard the broadcast of the ceremony in connection with Yugoslavia's entrance into the three-power pact in Vienna. The rage of the English and the "Americans" knows no bounds. Now they are trying to present this situation as if it had happened against the will of the Yugoslavian people. In the meantime, the Japanese foreign minister, Matsuoko, left Moscow and is in a special train on his way to Berlin. In the meantime, The English and the "Americans" are gnashing their teeth. Roose- [fol. 17] velt is so enraged that he "froze" the one mil-

lion dollars which Yugoslavia has here, in spite of the fact that America's funds in Yugoslavia are supposed to be about twenty four million dollars and probably higher. Well, these gentlemen will probably have to suffer more attacks of rage before they finally realize that the world has already passed them by. . . .

On Sunday, May 4, 1941, the author made the following entry in his diary:

"Listened to Hitler's speech from the Krolls Opera House on 15.2. It was wonderful as usual. The idea of the whole speech was "nothing is impossible for the German soldiers." In the afternoon I went to the Uptown. . . ."

On Tuesday, May 27, 1941, the following entry was made:

"Went to Riedels in the evening for a meeting of the membership committee. Took Fred Kettler along. George Mehringer told me that Reed wanted to see him in the evening and Walter Riedel was busy so that only Fred Kettler and I were there. Max Riedel also took part in the discussion. Before that we listened to Roosevelt who made another crazy and abusive speech against Germany and the Axis powers in general. Went home at 10:15.

On Tuesday, June 17, 1941, the author made the following entry:

"The whole country is under the influence of the insane actions of the Government in Washington which have the character of wild, unbridled despotism. Practically no German citizen can leave the country. They are held as hostages, say the radio announcers. In contrast to this, Germany has always treated Americans with the greatest respect. Went to the movies in the evening."

That having made and conducted the aforesaid investigation of the said Carl Wilhelm Baumgartner, he the said J. W. Menzie, believes and has reason to believe that the following facts and allegations are true:

That the said Carl Wilhelm Baumgartner was, prior to the 26th day of September, 1932, a native and citizen of The German Reich.

That the said Carl Wilhelm Baumgartner entered the United States on the 9th day of February, 1927, under the name of Karl Baumgarten, and now resides at Kansas City, Jackson County, Missouri, within the Western District of Missouri, and within the jurisdiction of this court. That the said Carl Wilhelm Baumgartner and the said Karl Baumgarten are one and the same person.

[fol. 18] That on the 16th day of May, 1932, the said Carl Wilhelm Baumgartner filed his petition for naturalization, No. 6197, in the United States District Court for the Western Division of the Western District of Missouri, in which said petition for naturalization the said Carl Wilhelm Baumgartner represented and set forth under oath as required by law, among other things as follows:

I am attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. It is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to The German Reich, of whom (which) at this time I am a subject (or citizen), and it is my intention to reside permanently in the United States.

That thereafter on to-wit, the 26th day of September, 1932, the said Carl Wilhelm Baumgartner took the following oath of allegiance in open court as required by law:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty and particularly to The German Reich of whom (which) I have heretofore been a subject (or citizen); that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion; So Help Me God. In acknowledgment whereof I have hereunto affixed my signature.

On the same date, to-wit, the 26th day of September, 1932, the said United States District Court, at Kansas City, Missouri, for the Western District of Missouri, relying on the

truth and good faith of the representations made by the said Carl Wilhelm Baumgartner in his petition for naturalization and in his oath of allegiance, entered its order admitting him to citizenship in the United States and thereupon certificate of naturalization Number 3532623 was issued to him by the Clerk of said Court.

That all of the representations aforesaid made by the said Carl Wilhelm Baumgartner in his petition for naturalization were false and fraudulent in that he was not in fact attached to the principles of the Constitution of the United States at the time of the filing thereof nor during the five years prior thereto; in that he did not in good faith intend to renounce absolutely and forever all allegiance and fidelity to The German Reich of which he was then a subject but in fact intended to retain allegiance and fidelity to the said German Reich; and in that he did not in fact intend to reside permanently in the United States.

That all of the representations aforesaid made by the said Carl Wilhelm Baumgartner in his oath of allegiance were likewise false and fraudulent in that he did not in fact renounce and abjure all allegiance and fidelity to the said German Reich; in that he did not in fact intend to support the Constitution and laws of the United States of America against all enemies, foreign and domestic; and in that he did not in fact intend to bear true faith and allegiance to the same, but in fact did intend to remain a subject of The German Reich and to maintain his allegiance thereto.

[fol. 19] That the said certificate of naturalization was procured by the said Carl Wilhelm Baumgartner fraudulently and illegally and for the purpose of obtaining the rights, privileges and protection of American citizenship without intending to assume the duties thereof, and that said certificate of naturalization is subject to cancellation.

And [illegible] affiant saith not.

J. W. MENZIE.

Before me, Bessie Motley, a Notary Public, in and for the county of Jackson, State of Missouri, on this ..... day of August, 1942, personally appeared J. W. Menzie, who, upon being duly sworn, stated that he is a Special Agent of the Federal Bureau of Investigation of the Department

of Justice of the United States; that he has read the foregoing affidavit and that the facts stated, and the allegations contained therein, are true according to his best information and belief.

Subscribed and sworn to before me this 21st day of August, 1942.

(Seal) BESSIE MOTLEY,
Notary Public.

My Commission expires June 29, 1946.

[fol. 20] Answer.

In the District Court of the United States of America For the Western District of Missouri, Western Division.

United States of America, Plaintiff,
No. 1278. vs. Civil Action.
Carl Wilhelm Baumgartner, Defendant.

Comes now Carl Wilhelm Baumgartner, defendant in the above entitled cause of action, and named in the complaint filed therein, and for his answer to the allegations set out in said complaint says:

1. Defendant admits the allegation set forth in paragraph 1 of said complaint.

2. Defendant admits the allegation contained in paragraph 2 of said complaint, but states that the diversity of name therein set forth, was and is without significance, and was and is without motive of any kind, proper or improper.

3. Defendant admits the allegations contained in paragraph 3 of said complaint, and asserts that the sentiments expressed in his petition for naturalization, partially quoted from in said paragraph 3, were then true, are now true, and have always been true.

4. Defendant admits the allegations contained in paragraph 4 of said complaint.

5. Defendant admits the allegations contained in paragraph 5 of said complaint, and asserts that the representa-
[fol. 21] tions made by the defendant in his petition for naturalization, and in his oath of allegiance, were then

true, are now true, and have always been true, and were at that time, and are now, made in truth and in good faith.

6. Defendant denies the allegations contained in paragraph 6 of said complaint.

7. Defendant denies the allegations made in paragraph 7 of said complaint.

8. Defendant denies the allegations contained in paragraph 8 of said complaint.

9. Defendant admits that the affidavit mentioned in paragraph 9 of said complaint was made and filed, but denies all allegations, averments, and statements of fact, innuendo, insinuation, and speculation therein contained which in anywise, directly or indirectly, by innuendo, insinuation or speculation, charge this defendant with lack of good faith or failure to be truthful in all respects in the procurement of a certificate of naturalization of citizenship in the United States of America, as they touch or in anywise effect his proper conduct as a citizen of the United States of America at all times since such certificate of citizenship was issued to him and in his name.

Defendant further denies all allegations, averments, and statements, innuendos, insinuations and speculations in said affidavit as they relate to his wife and children.

Defendant admits the keeping of the diary referred to in said affidavit, but denies the proper translation thereof as set forth in said affidavit for the reason that it was taken [fol. 22] from him and translated by persons unknown to him, and he has not had opportunity to inspect the original of said diary and consider if the translation thereof is accurate or reflects his mind.

Defendant further denies certain allegations of formal fact in said affidavit set forth which are of no particular consequence in the determination of the issues in this case, and which may be readily cleared by his testimony.

10. Defendant affirmatively asserts that he is, and has always been, attached to the principles of the constitution of the United States, and is well disposed to the good order

and happiness of the United States; that when he became a citizen of the United States, and in the process thereof, he did renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to The German Reich, of which prior to that time he was a subject, and that at that time and ever since that time he has owed allegiance and fidelity only to the United States of America, and at that time and since that time it has been his constant intention to reside permanently in the United States.

Defendant further says that at the time he became a citizen of the United States, and ever since that time, and now, it was and is his intention to support and defend the constitution and laws of the United States of America against all enemies, foreign and domestic, and to bear true faith and allegiance to the United States of America, and to the constitution and laws of the United States of America; and that at the time he became a citizen of the United States, ever since that time, and now, his mind has been free and without any mental reservation or purpose of [fol. 23] evasion in those particulars, or any other particular, effecting in anywise his status as a citizen of the United States of America.

Wherefore, defendant prays that he may go hence with his costs.

BOWERSOCK. FIZZELL & RHODES,
JOHN RHODES,
Attorneys for Defendant.

Western District of Missouri,
Western Division,
Jackson County, Missouri.—ss.:

Carl Wilhelm Baumgartner, being first duly sworn on his oath says that he is defendant in the above entitled cause of action; that he has read the above and foregoing answer; that the allegations, averments, and statements therein contained are true.

CARL W. BAUMGARTNER,
CARL WILHELM BAUMGARTNER.

Subscribed and sworn to before me this 26th day of October, 1942.

(Seal) KATHERINE WEBBER,
Notary Public in and for
Jackson County, Missouri.

My commission expires June 3, 1945.

Filed in the United States District Court Oct. 26, 1942.

[fol. 24] (Memorandum Opinion, Findings and Conclusion, Decree, November 11, 1942.)

In the District Court of the United States For the Western District of Missouri, Western Division.

United States of America, Plaintiff,
No. 1278. vs.
Carl Wilhelm Baumgartner, Defendant.

In this proceeding, which has been brought under the appropriate statute to cancel a certificate of naturalization, I make the following formal findings of fact. 1. Carl Wilhelm Baumgartner became a naturalized citizen of the United States September 26, 1932, on an application filed May 16, 1932. 2. To obtain naturalization he swore in open court that he renounced all fidelity to any foreign state and particularly to The German Reich and that he would bear true faith and allegiance to the Constitution and laws of the United States. 3. At the very time he took that oath he accepted as sound and believed to be righteous the principles of government then advocated and thereafter put in practice by Adolph Hitler, his real loyalty was to those principles. 4. Hitler's principles are diametrical-
[fol. 25] ly opposed to those of the United States. Hitler believes in dictatorial rule, not in government "of the people, by the people and for the people." Hitler despises and has destroyed, where he could, representative government. Hitler asserts the Nazis are superior to other men, entitled to superior privileges, that America's doctrine that "all men are created equal" is the raving of idiots. Hitler, by his tools, puts to the torch cathedrals, synagogues and churches; desecrates the lodges of Free Masons; burns libraries and books; imprison priests, rabbis, clergymen;

tortures the old, the weak, the young, if they are not of his so-called "superior" race; robs helpless individuals of minorities of their property, sends them penniless into exile, murders hundreds of thousands of them in cold blood. Hitler enslaves millions, tramples under foot peoples who were free, who asked only that they might live in freedom; perverts and debases the minds and souls of young men and young women. Baumgartner has approved in his own handwriting, either expressly or by inference, all these infamies. He defends them. He says that Hitler's end justifies Hitler's means.

Baumgartner's own testimony has destroyed a contention he might have made, although it would have been specious at best. Hitler did not come into full power [fol. 26] until after Baumgartner took the oath of allegiance. The full measure of Hitler's depravity was not, in the beginning, known to the world. It became known speedily. Baumgartner has testified on the witness stand in this trial that his loyalty to the United States, its constitution, its principles of government, was exactly the same when he took the oath as when he was writing his diary. He was just as loyal to the United States in 1932 as on February 25, 1939, when he wrote that he had attended a meeting opened with the "national anthem" (the Nazi national anthem, not The Star-Spangled Banner), "whereupon everyone naturally arose and assumed the usual German stance with the arm extended to give the National Socialistic greeting." As when he wrote (February 25, 1937): "I said * * that in my opinion it was the duty of German Americans to * * fend off all attacks on Germany." As when he wrote (March 23, 1939) after Hitler's entrance in Memal: "This ends another of the crazy doings of the western democracies." As when he wrote (March 29, 1939): "a good German who has not been Americanized, that is ruined." As when he wrote (December 31, 1940): "Hitler's speech * * was an effective answer to Roosevelt's false and twisted statements." As when he wrote (December 22, 1938): "The only ones who have any ideas here are the Jews and their ideas are vile, mean and malicious." The effect of Baumgartner's own declaration is that his ideas, when he took the oath of allegiance, were [fol. 27] the same in substance as his statements, oral and written, show them to have been thereafter.

Baumgartner has been given a trial in the American way. When he complained to the court that he was having difficulty in obtaining a lawyer, the court sent him for advice and help to the retiring President of the Missouri Bar Association, a distinguished and outstanding lawyer. He has been represented by that lawyer with his characteristic and great ability. Everything Baumgartner or his learned counsel wished to present has been heard and considered. He has been the recipient of due process of law in full measure, running over.

Conclusion of Law.

There is only one possible conclusion to be reached. The order admitting Carl Wilhelm Baumgartner to citizenship and the certificate of citizenship granted him were obtained by fraud; they were illegally procured by means of an oath falsely made, that he had renounced all fidelity to The German Reich and that he would bear true faith and allegiance to the Constitution and laws of the United States.

Decree.

This cause coming on to be heard upon the pleadings, [fol. 28] the evidence introduced, the written and oral arguments of counsel, the Court having made findings of fact and stated a conclusion of law and being fully advised in the premises, it is by the Court

Ordered, Adjudged and Decreed (1) that the order of this Court made September 26, 1932, admitting Carl Wilhelm Baumgartner to citizenship in the United States be and it is cancelled and set aside, (2) that Carl Wilhelm Baumgartner be and he is hereby directed to surrender his certificate of naturalization to the clerk of this court, (3) that Carl Wilhelm Baumgartner be and he is restrained and enjoined from claiming any right, privilege, benefit or advantage whatsoever under his certificate of naturalization, (4) that the costs be and they are assessed against him.

MERRILL E. OTIS,
Judge.

Filed in the United States District Court Nov. 11, 1942.

[fol. 29] Notice of Appeal.

In the District Court of the United States For the Western District of Missouri, Western Division.

United States of America, Plaintiff,
No. 1278. vs.
Carl Wilhelm Baumgartner, Defendant.

Notice is hereby given that Carl Wilhelm Baumgartner, the defendant above named, hereby appeals to the Circuit Court of Appeals for the Eighth Circuit from the final judgment and decree entered in this action on November 12, 1942.

JOHN F. RHODES,
Attorney for Appellant, Carl Wilhelm Baumgartner, 2500 Fidelity Building, Kansas City, Missouri.

Copy of above notice of appeal mailed to Maurice M. Milligan, Attorney for Plaintiff, Nov. 13, 1942.

E. O'KEEFE,
Deputy Clerk.

Filed in the United States District Court, Nov. 13, 1942.

[fol. 30] Bond On Appeal.

Know All Men By These Presents:

That we, Carl Wilhelm Baumgartner as principal, and Fidelity and Deposit Company of Maryland, a Maryland corporation, as surety, are held and firmly bound unto the United States of America in the full and just sum of $250.00, to be paid to said United States of America; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and firmly by these presents.

Signed with our seals and dated this 13th day of November, 1942.

Whereas, lately in a trial in a suit depending in the District Court of the United States for the Western District

of the Western Division of Missouri between the United States of America, plaintiff, and Carl Wilhelm Baumgartner, defendant, bearing docket No. 1278 of said Court, a final judgment and decree was rendered against the said [fol. 31] Carl Wilhelm Baumgartner, and

Whereas, the said Carl Wilhelm Baumgartner has filed with the clerk of said Court his Notice of Appeal to the Circuit Court of Appeals for the Eighth Circuit from said final judgment and decree.

Now the Condition of the Obligation is Such, That if the said Carl Wilhelm Baumgartner shall pay all costs if his said Appeal be dismissed, or the judgment affirmed, or such costs as the Appellate Court may award if said judgment be modified, then the above obligation to be void; else to remain in full force and virtue.

CARL WILHELM BAUMGARTNER,
Principal,

(Seal) FIDELITY AND DEPOSIT COMPANY OF MARYLAND, A CORPORATION,
By (Name illegible),
Attorney in Fact,
Surety.

Filed in the United States District Court Nov. 13, 1942.

[fol. 32] (Order Extending Time to File Transcript.)

Now on this day comes John F. Rhodes, Esq., attorney for appellant, Carl Wilhelm Baumgartner, and makes oral motion for extension of time within which to file record on appeal in the United States Circuit Court of Appeals for the Eighth Circuit, and after hearing statement of counsel and being fully advised in the premises,

It is ordered that appellant shall have until the first day of February, 1943, within which time to file the record and cause the case to be docketed on appeal.

MERRILL E. OTIS,
Judge.

Received a copy of the above and foregoing Order this 6th day of January, 1943, and have no objection to its being entered.

MAURICE M. MILLIGAN,
United States Attorney.

Filed in the United States District Court Jan. 6, 1943.

[fol. 33] Designation of Portions of the Record to be Made Up By the Clerk of the United States District Court For the Western District of Missouri to be Sent to the Clerk of the United States Circuit Court of Appeals For the Eighth Circuit at St. Louis.

Appellant designates the following portions of the record to be made up by the Clerk of the United States District Court for the Western District of Missouri Western Division to be sent to the United States Circuit Court for the Eighth Circuit at St. Louis, to be by him printed as the record in the above cause:

(1) Original Petition.

(2) Answer.

(3) Appellant's (Defendant's) Exhibits A, B, C, D. E, F and G.

(4) Appellee's (Plaintiff's) Exhibits 1, 2, 3, 4, 5, 6, and 9, (Exhibits 7 and 8 are the original diary written in German. Exhibits 7 and 8 not to be printed, but to be delivered to the Circuit Court of Appeals. Exhibit 9 is the translation into English).

[fol. 34] (5) Memorandum opinion, findings and conclusion and Decree.

(6) Notice of Appeal.

(7) Extension of time for filing record on appeal.

(8) Bond on Appeal.

(9) Narrative statement of the evidence in the case, with which is, filed herewith, two copies of the transcript of the evidence.

(10) This praecipe.

JOHN RHODES,
Attorney for the Appellant.

Bowersock, Fizzell & Rhodes, Of Counsel,
2500 Fidelity Building,
Kansas City, Missouri.

Service acknowledged this 30th day of January, 1943.

M. M. MILLIGAN,
United States District Attorney,
By Richard K. Phelps, Asst.

Filed in the United States District Court Feb. 1, 1943.

[fol. 35] Narrative Statement of the Evidence

Trial had before the Honorable Merrill E. Otis, one of the Judges of the United States District Court for the Western Division of the Western District of Missouri, without a jury, in Kansas City, Missouri, on the 9th, 10th and 11th days of November, 1942.

Appearances: Attorneys, Maurice M. Milligan, United States District Attorney, and Richard K. Phelps, First Assistant United States District Attorney; the Defendant was present in person and represented by his attorney, John F. Rhodes.

Both parties announced ready and both parties made opening statements.

Mr. Harry C. Spalding, being produced, sworn and examined as a witness on behalf of the Plaintiff, stated that his residence is Kansas City, Missouri; that he is Deputy Clerk of the United States District Court for the Western District of Missouri, and has been for twenty-two years, and that he has with him the Court Records pertaining to the naturalization of the Defendant, Carl Baumgartner (Tr. 19).

The witness produced was examined, and there was introduced in evidence Plaintiff's Exhibits 1, 2, 3, 4, 5 and 6 (Tr. 26).

Hollie H. Trosper was produced, sworn and examined as a witness on behalf of the Plaintiff and testified that he resides in Kansas City, Missouri, at 5341 Olive Street, and has so resided since 1911, and is employed by the Kansas City Public Service Company, and has been since 1911, and is a despatcher for that Company; that he is acquainted [fol. 36] with the Appellant, first meeting him at 5329 Olive Street, Kansas City, Missouri, where witness and a neighbor, who lived next door to the Appellant at 5331 Olive Street, were in conversation, and Appellant passed by and joined in that conversation. Witness states it was about the time Poland was invaded by Germany that witness and the neighbor, in talking about the War and other things, and speaking of Appellant said: "• • • and he made his views and expressed his views that Adolf Hitler was a good man and that he thought that if this country was run like Adolf Hitler would run a Country, that it would be a great deal better Country; and President Roosevelt's name was brought into the conversation, and he said Mr. Roosevelt wasn't worthy as running this country, that they should have a man at the head of this Country to run it like Adolf Hitler; that Adolf Hitler was one of the finest men in the world and no doubt but what he would rule this Country some day and make his home in New York City." (Tr. 28)

Witness further stated as follows:

"A. Yes, sir, he said that Adolf Hitler had what we would call secret service, I suppose, people all over the world, and he knew what was going on, and those people were sent here and paid by the Nazi government to do certain things, and if they didn't do these things, why, they first would receive a bullet and then they would receive another shell, and this last one as a warning that they would receive a silver bullet, and that silver bullet meant that they would—for them to commit suicide, and if they didn't, they was liable to fall off the Brooklyn Bridge or be hit by an automobile."

[fol. 37] Q. That is, if they failed?

A. If they failed, and this man also said that he hadn't received his first one yet.

Q. Did he make any statement whether or not he was connected with any German organizations?

A. He said that he belonged to an order called the so-called "Bund", I believe is the way you would call it, is it not? And they had them organized all over the Country.

Q. You mean the German Bund?

A. The German-American Bund.

Q. Did you have any later conversations with this defendant?

A. No, not in the way—I just know the man and know we lived there close together, and this man, Mr. Jeffcoat, knew him well, and we were standing there talking, as I said.

Q. Is Mr. Jeffcoat living now?

A. No, Mr. Jeffcoat died with t. b., I am sorry to say.

Q. Can you fix the year in which this conversation took place? (Tr. 29)

A. I imagine it was—I don't know just what year. I believe it was 1938, but it was the year of the invasion of Poland.

Q. That was in 1938?

A. A short time later his wife and children went to Germany.

Mr. Phelps: That is all. You may cross examine." (Tr. 30)

On cross examination witness stated that the neighbor with whom he was talking was named Jeffcoat who was dead at the time witness was testifying, and witness thought he must have died about 1939 or 1940 (Tr. 30). Witness states that he could not quote exactly the words of Appellant (Tr. 31), and witness stated that he didn't remember [fol. 38] Appellant's exact words.

"Q. (Interrupting) What did he say about the subject of Adolf Hitler having a secret service all over the world and it was paid by the Nazi government, and if the personnel did not perform, they would be sent some bullets? What were the words used there if you can recall them?

A. Well, I couldn't just exactly call the exact words, because I didn't know anything about anything like this coming up or anything. If I did, I might have made a memorandum of it to help, and kept it, but I didn't.

Q. You are stating your conclusions now rather than the precise words? A. Yes.

Q. You say he said he belonged to the German-American Bund? A. Yes, sir.

Q. What were his words in that connection, if you recall them?

A. He said he belonged to the German-American Bund, that they organized around over the city.

Q. Did he say where he belonged?

A. No, sir, he did not.

Q. Now, is he the only one that talked at that time?

A. He and I and Mr. Jeffcoat.

Q. What did you and Mr. Jeffcoat say in response to these assertions?

A. We didn't think much of the conversation.

Q. Whom have you talked to prior to coming here to testify (Tr. 32) about this case?

A. Well, I don't remember the name of the man that came out and took my deposition; that is all I know.

Q. Some man from the United States District Attorney's office [same] out and talked to you?

A. Yes, sir. (Tr. 33)"

[fol. 39] Mrs. Eleanor Kramer, being produced, sworn and examined as a witness on behalf of the Government, testified that she is a resident of Kansas City, Missouri, residing at 5820 Wyandotte Street, and has lived in Kansas City all her life; that she is divorced; that she now lives with her parents in Kansas City; that she knows the Appellant and has known him for thirteen years, having become acquainted with him in 1939 when she occupied the same hospital room at St. Joseph's Hospital with Mrs. Baumgartner at a time when they were each having children (Tr. 34); that she speaks the German Language; that she and Mrs. Baumgartner conversed in German; and she later visited at the Baumgartner home frequently; and that the Baumgartner's visited at her home (Tr. 35). Witness further stated:

"A. Well, in various discussions we had, Mr. Baumgartner attempted to prove to me that the condition in Germany as to the Government, for instance, was better than the condition in this country. That there was virtually no unemployment in Germany, while we had millions unemployed. That the people were better taken care of there in that they had medical attention given to them by the Government, or, at least, at a small rate per year, which we didn't enjoy over here. That there was more of a feeling of contentment and security among the German people than we could obtain in this country under our form of government.

Q. Did he compare the American government with the German government?

A. In that way, that it was a more satisfactory form of government for the people concerned.

Q. Did he ever make any statements concerning Adolf Hitler and the organization of the present German state?

A. I don't remember any exact statement, except that he was always very strong in his ardor and his praise of Adolf Hitler. He did admire him.

[fol. 40] Q. What were the dates of these conversations that you are telling the Court about, Mrs. Kramer?

A. Well, I believe that one was about 1939, just before his wife went to Europe.

Q. Did you discuss with him the reasons for his family going back to Germany? A. Yes.

Q. What reasons did he give for having them go back to (Tr. 36) Germany?

A. Well, there were, I would say, two. The first reason was that she was homesick and wanted to go back, and see her parents. Another reason that I gathered from conversations was that she really wanted to go over and see the conditions of Germany and what they were, and if they were what the German publications that he was taking stated they were.

Q. Did he say anything about Germany being a better place in which to educate his children than America?

A. I don't believe I ever heard him say that to me. (Tr. 37) * * *

Q. Do you recall making a trip with Mr. Baumgartner to Park College, I believe it is, at Parkville, Missouri?

A. Yes.

Q. Did you have some conversation with him on the way back from that trip? A. Yes. * * *

Q. What was this conversation about? * * *

A. That a friend of his had gone to Germany and come back to the United States, and reported that conditions were most enjoyable in Germany. That the people were really better off than they had ever been. Another part of the conversation was; we came by St. Luke's Hospital and I pointed out the candles and the lights of the hospital and remarked that they were beautiful or lovely, and he sort of scoffed and said, "Hypocrites, (Tr. 39) all of them. They profess to be Christians and want peace and yet propagate war."

[fol. 41] Q. Do you recall any other conversation with him?

A. I don't believe so. There may have been some personal things. * * *

Q. Did you ever have any conversation with the defendant, Carl Baumgartner, as to any probable date of her return to the United States? A. I don't believe so.

Q. Did he ever give you any reason why she didn't return to the United States?

A. I don't think I talked to him on the matter.

Mr. Rhodes: May I interrupt there a minute?

By Mr. Phelps:

Q. Do you remember any discussion with the defendant, Baumgartner, about the matter of freedom of speech in this country as compared with Germany?

A. Yes, I remember one conversation we had in which he said that we of the United States don't really have freedom in the true sense of the word, that, for instance, he would not be able to go out in the middle of the street and make a speech and create a great deal of disturbance without the police being there or coming and (Tr. 40) taking him away for disturbing the peace. That he would not be able, for instance, to go down to his office and say whatever he wanted to whenever he wanted to because he would lose his job, and I don't remember any other instances, * * *" (Tr. 41)

HARRY SHERMAN was produced, sworn and examined as a witness on behalf of the Government, and testified that he

lives at 8032 Penn, outside of Kansas City, in Jackson County; that he is an instrument man with the Kansas City Power & Light Company in the testing laboratory where he has been for twenty-three years, twenty-two years of which is in the testing laboratory; that Appellant was employed at the same place (Tr. 42) and worked at his side all the time; that he first began working with him [fol. 42] in about 1932 and that that has continued up until the present day; that he has had conversations with Appellant and other employees there comparing the United States Government with the German Government, which conversations began "almost from the time he entered the testing laboratory of the Power & Light Company as a worker," and that witness further testified as follows:

"A. Well, of course, Carl referred to Adolf Hitler as being a man that has really rejuvenated Germany. He said that before Hitler went into power there that Germany had been overrun by the English from World War I. He said that Germany had been crowded down so that they couldn't do anything there, the people actually couldn't live like they should, and that for that reason he was glad that Adolf Hitler (Tr. 43) had taken over Germany and put the German people in their right place in the world.

Q. Do you recall anything else that he said?

A. Well, of course, we had daily conversations, friendly, sometimes they would get a little bit hot but usually when they got a little bit hot, we quit talking and went about our work, but on other occasions when Germany invaded Poland, Carl said that Germany was doing the right thing because Germany was acting as a protectorate for the Polish people from England and it was the same way with all countries that Germany had invaded, that they were acting as a protectorate for that country.

Q. What other countries do you have reference to?

A. Belgium, Czechoslovakia, Austria, Norway—but not France.

Q. Did he say anything about the invasion of Belgium and France?

A. During the time that the French people went to war with Germany, Carl said that France wouldn't last over [fol. 43] six weeks, that the German Army would conquer them in that time.

Q. Did he say anything with reference to a justification of that invasion, whether it was morally right or wrong?

A. Yes, he said that France was in connection with England, that England was using France to do their fighting for them.

Q. What did he say about the United States with reference to this connection with England?

A. He said that the United States was merely a pawn for England, that England had their thumb on us and that we would have to do practically what (Tr. 44) England said we would have to do.

Q. Did he say anything about the Jewish race in America?

A. Yes. Carl said that the Jewish race in America was trying to take over the industrial part of the United States.

Q. What else did he say?

A. He said we should not patronize the Jewish people when we buy things. He said a good instance of it was when we [do] downtown here in Kansas City to buy things it was very hard to purchase anything unless you purchased it from a Jew.

Q. Did you ever have any conversation with him with reference to the persecution of Jews in Germany?

A. Yes. He said Hitler was doing the right thing by running the Jews out of Germany because the Jews had practically taken over Germany, which they would try to do in the United States later on.

Q. Now, you said a while ago that some of these discussions got pretty hot, these conversations you mean you had with the defendant. What did you mean by that?

A. Well, I would get mad at Carl and he would get mad at me and I would go back to work and he would do the same thing.

[fol. 44] Q. Well, what was said that would make you mad, as you put it, and make him mad?

A. Well, the main thing was that Carl always upheld what the German Army was doing in overrunning these other countries. That made me mad and I told him I didn't think much of it, and, therefore, inasmuch as we were working together (Tr. 45) and I didn't want to have things go any further, I just terminated the conversation and went back to work."

Witness states further that Appellant said that "His wife and children were going back to Germany to visit her relatives."

Witness further stated:

"Q. Did you ever ask him if he were going back to Germany? A. No, sir, I don't believe I did.

Q. Well, in these conversations with him that you are talking about, was anything said by you at any time about he ought to go back to Germany if he felt that way about it?

A. Well, Carl was—in his talks to me was very strong for the German government and I asked him if he thought the German Government (Tr. 46) was so much better than the United States, why he didn't go back to Germany, and Carl always gave me a sort of evasive answer, said he wanted to make a living in the United States.

Q. Did he ever say that he was not going back to Germany? A. No, sir. (Tr. 47)"

JOHN HEINRICH, being produced, sworn and examined as a witness on behalf of the Government, testified, as follows: That he lives at 522 South Denver, Kansas City, Missouri; that he is employed and has been for seventeen years in the electrical engineering department of the Kansas City Power & Light Company, and is employed in the main office building at 14th & Baltimore, and not in the laboratory, which laboratory is located at 19th & Campbell [fol. 45] Street (Tr. 48); that witness' duties require him to go to the laboratory many times, and he has met Mr. Baumgartner, Appellant, there in the early thirties, along in 1931 or 1932; that he would see the Appellant twice a week, but lately not so often; that for the past four years the witness had been to the laboratory about once a week (Tr. 49).

Witness further testified as follows:

"Q. Did you have any discussion with him as to the merits of the respective Governments?

A. Yes, several times later on the question of government came up.

Q. What did he say about that?

A. Well, he always said that the German methods of government were better than the United States, that we

were listening too much to one man, that one man was in collusion with the Jews, and was running the country, in referring to the president. (Tr. 50)

Q. Now, can you tell something more of these conversations with Mr. Baumgartner?

A. Well, the mere fact that their methods were superior to ours and that we were supposed to be a free country, we were really tied down more than the Germans were.

Q. Did you ever differ with him on those statements?

A. I did emphatically.

Q. Did he say anything to you about that?

A. On one occasion when I differed with him, I told him I felt that no man had the right to persecute a race or a country as Hitler was doing, that I certainly didn't agree with him that Hitler was doing a good thing at the time and he might be doing things for his own good, but he was not doing it for the good of the German people, at which time Mr. Baumgartner called me a traitor to my country.

Q. Do you recall the date of that conversation?

A. No, I don't. It must have been in '38, the nearest [fol. 46] I can recollect.

Q. Do you remember any conversations that you had with the defendant with reference to the German acts of aggression against other peoples in Europe?

A. No, I can't remember anything definite. As I say, I didn't meet him but twice a week and then only on short occasions.

Q. You spoke a moment ago of the conversations you had with (Tr. 51) him with reference to the persecuton of Jews in Germany. Can you tell anything more about those conversations than you have already told?

A. No, I don't believe I can add a thing.

Q. You are a citizen of the United States? A. Yes, sir.

Q. You were born in this country, were you?

A. I was born in North Baltimore, Ohio.

Q. Your parents were born in America?

A. My mother was born in America and my father in Germany, Stuttgart.

Q. You are of German extraction? A. Yes. (Tr. 52)"

On cross examination the witness stated that only he and the Appellant were present when the Appellant called him a "Traitor to my country".

JOHN R. MCKENZIE, being produced sworn and examined as a witness on behalf of the Government, says that he lives at 140 South Kensington, Kansas City, Missouri, and is employed at the Kansas City Power & Light Company as a wire splicer at 19th & Campbell Streets, the Stores Department where the testing laboratory is located; that he has been there about six years, that he began his employment with the Kansas City Power & Light Company in 1913; that he knows the Defendant (Appellant) and has known him since (Tr. 53) August 8, 1927, at which time Appellant reported to the witness to be put to work and he was put to work.

[fol. 47] Witness further testified:

"Q. Now, did you ever engage in any conversations with this defendant or were you present and heard conversations between the defendant and other of his associates in the employment at the Kansas City Power & Light Company with reference to Germany as compared with the United States of America?

A. Well, about two days after beginning to work for me he began talking about Germany and their government. He didn't seem to be much enthused about the present form of government at that time over there. It seemed like there was quit a number of political powers starting up in this country, but there was one power that he seemed to be very much enthused about and that was the present Hitler power over there. He got so strong on that that I had a couple—or one veteran I know, perhaps two, at that time working for me, and they came to me and told me that they had rode three thousand miles across the ocean to fight them fellows and they didn't want to hear any more of that stuff over here and they wouldn't stand it, that there might be an accident happen, so I went to Carl and talked (T-54.) to him about it and I asked him what he came to this country for and he said he had better opportunities in this country than he had in Germany at this time, and I asked him if he intended to make this his home and he said yes, and I said, "Maybe you had better take advantage of that opportunity and not talk so much about Germany." So he quieted down for two or three days and then he started again about the superiority of German people and the German schools and even brought me out a book to

show the superiority of their drawings, their sub-stations over there are over ours, and I transferred him off of my crew to keep down trouble.

[fol. 48] Q. Now, that was in the early days when he was first working for you?

A. Yes, I think he worked for me around ten days or two weeks, about that time.

Q. Now, were you in association with him after that?

A. Only when I met him down here at the laboratory once in a while.

Q. And you occasionally met him down there?

A. Yes.

Q. Did you have any conversations with him at that time about any connection he may have had with German organizations in this country?

A. *I asked him one day* what that German-American Bund was and he said it was something on the order of your Masonic Order, he said, 'We have our meetings and have our business meetings and then we have our entertainments after-(Tr. 55)wards and have a real good time; and I told him that I didn't know any time that that any Masonic Order had ever met to tear down people or sabotage any country's government, and he said that wasn't what they were for.

Q. That was not what the German Bund was for?

A. Yes.

Q. Did you ever have any conversation with him with reference to his family going back to Germany?

A. I asked him one day if he wouldn't be glad if his family was back in the United States as Germany was in War and he said no, he wouldn't, that they were safe over there and I asked him when his wife was coming back. He said when she could come back on a German boat and I asked him if an American boat wouldn't suit her and he said, 'No, I would rather she would come back on a German boat.' I didn't ask him what his reasons was about it.

Q. What was the date of this conversation, Mr. McKenzie?

A. That was along last fall, about September, I believe, in 1941.

[fol. 49] Q. Did you hear him say anything about Germany's acts of aggression against other nations in Europe?

A. I don't believe I heard him say anything about that.

Q. Did you ever hear him make any adverse criticism of Adolf Hitler or of the present [Germany] State?

A. He was always praising Adolf Hitler in his way of governing the (Tr. 56) country.

Q. Did you ever mention adverse criticism of the President of the United States or the American Government?

A. No, I never did. (Tr. 57)"

Neil A. Bartley, being produced, sworn and examined as a witness on behalf of the Government, testified that he lives at 5403 Fairway in Johnson County, Kansas; that he has been in the mail order business; that he has lived in Kansas City or vicinity since June, 1929; that he is acquainted with Baumgartner, the Appellant, first meeting him in 1933 or 1934, where they were both enrolled in a correspondence course (Tr. 58) known as Alexander Hamilton's Modern Business, sessions in the course to be held once a week (Tr. 59).

Witness states that he had conversations with the Appellant with reference to the respective merits of the German and American Governments, first, on being at witness' home where there was a discussion about a tendency towards a monetary inflation situation, at which time Appellant "covered for me very interestingly the history of Germany's post-war period."

"A. Well, the best way for me to get at it would be to remember specific instances. The one I recall best was a discussion at my home about whether or not our minister at the church had mentioned the international situation, whether he should say anything contrary to the dictators of Europe and that discussion—you want me to cover the [fol. 50] whole thing?

Q. Yes, go ahead and tell the substance of the conversation at that time.

A. That came up because we were both on a board but he thought that I should tell the minister that this should be kept out of the pulpit and I suggested that he tell the minister what he had on his mind because he had as much right to do it as I had. That led to a discussion of conditions in Germany as against conditions here. It lead to a discussion of the philosophy of Government there as against ours, you know, unemployment, the fact that the Jewish

children (Tr. 60) could continue going to the regular school, the aggressive tactics of the Nazi-Hitlerism leaders; the fact that he maintained the Jews dominated this country, the dangerous situation similar to a thing that Hitler had uprooted in Germany, where the Jews dominated the press, they dominated the judiciary, they dominated finance, doing it by devious and sub rosa means in many cases. We discussed and argued the point of whether or not the means toward an end justified the end.

Q. Justified the means, you mean?

A. Yes, that is right, whether the Treaty of Versailles could just be overlooked as a piece of paper, whether we could back into the Ruhr without any discussion at all, just go take it. We were—I was very much aware of his sympathies and he had caused me to be sympathetic toward the plight of the German people after the war.

Q. You said you had some discussion of the philosophy of government. By that do you mean the Nazi state as organized under Hitler and the American government?

Mr. Rhodes: I object to any leading questions.

By Mr. Phelps:

Q. What was said? Just tell what was said then, please, in your discussion as you said, of the philosophy of the Nazi government and the American government? You mentioned that it lead into a discussion of those things. [fol. 51] Now, tell the Court what that discussion was.

A. He maintained that regimentation, as the Nazis, formed it was (T61) superior to the democracy, that its people can be kept in their places, it just can be handled and it led to a better situation.

Mr. Rhodes: May I interject a question here? When were these conversations, what date?

A. This particular one?

Mr. Rhodes: Well, at your home and following, that you are talking about. A. It was in the fall of 1938.

Mr. Rhodes: The fall of 1930? A. 1938.

Mr. Rhodes: Oh, I am sorry.

By Mr. Phelps:

Q. I believe you said something about the occasion of this conversation arising because of something your pastor

or your minister had said. Do you recall what that was? Tell what the conversation was that he wanted you to go to your pastor and ask him to, as I understood you, asked him to refrain from making similar statements of that kind.

A. The minister had compared the youth movements in Germany and Russia, I believe, what the governments of those dictator countries were doing with the youth of the country and made the statement that no doubt we should be equally zealous in the training of our youth along democratic lines.

The Court: What church was it, what minister?

A. The Westport Congregational Church, Mr. North.

By Mr. Phelps:

Q. Where is that church? (Tr. 62)

A. 65th and Brookside.

The Court: Oh, yes.

By Mr. Phelps:

Q. What did the defendant ask you to do in connection with that statement made by your minister?

[fol. 52] A. Verbatim, was that I should go to Mr. North and ask him to keep international politics out of the pulpit.

Q. Did he give you any reasons for making that request of you?

A. None, except that the international politics did not concern a church in this country.

Q. I believe you said that you and the defendant both were members of the Board of Vestry? A. Deacons.

Q. Board of Deacons of your Church? A. Yes.

Q. Do you know whether the defendant taught a Sunday School class or Church School class? A. Yes.

Q. Did you have any connection with that kind of work, Mr. Bartley?

A. I was Superintendent of the Sunday School at the time.

Q. You were Superintendent of the Sunday School, and can you tell the Court what class of members of your church were? A. It was junior.

Q. Who were in that class?

A. Junior and senior high school boys; they ranged from fifteen to seventeen.

Q. He taught a boys' class? A. That is right.

Q. Did you ever have any discussion with him as to his manner of conducting his instructions in that class of— (Tr. 63)

A. (Interrupting) Yes.

Q. Will you tell the Court about that?

A. In our work, we have a very closely graded course that we follow and it is our opinion and the opinion of part of us, at least, that the course that is outlined for the junior-senior boys is not appropriate; it is a little bit too juvenile. They are developed beyond that. For that reason, it has been our practice to discuss social problems in light of good religious views and follow not any set course particularly, although it was my business to find out what was being done there. For instance, Mr. Baumgartner did a very fine job of covering the various religions of the world for these youngsters. That was one thing that I recall [fol. 53] distinctly that he handled through several months.

Q. Were any complaints made to you by the parents of any of the students in that class? A. Yes, there were.

Q. What was the general nature of those complaints? What was the cause of those complaints?

A. Well, they confronted me with the proposition point blank that he was [praching] Naziism to these youngsters. I didn't mention it to the defendant because I didn't have the information first-hand and very soon afterwards he resigned from that responsibility.

Q. Do you recall about what date it was, Mr. Bartley, that these complaints were made to you?

A. They were late in the year, in the fall of 1938; I would say November or December. (Tr. 64)

Q. Do you know if the defendant withdrew entirely from your church? A. Yes, he did.

Q. Do you know if he is a member of any other church now? A. I do not know.

Q. You said that this discussion—

The Court: Let me ask you a question. So far as you know, he never preached Naziism to the students in that Sunday School? Is that what you say? You had it second-hand?

A. I was not in his classes, Judge Otis, no, sir.

The Court: All right.

By Mr. Phelps:

Q. You said that in this discussion, about the time you were discussing the philosophies of government, that something was said about the treatment of racial minorities in Germany. Do you recall what the defendant said about those matters?

A. The Jews deserved their treatment, being uprooted, etc., in Germany because they had caused Germany's difficulty following the World War I. They had accumulated [fol. 54] the wealth and positions of responsibility in Germany out of the debacle following the World War. I asked why it wasn't handled legally; that we could do that sort of thing legally in this country if someone was outside of the usual bounds of good citizenship and the answer was very vague; it had no point.

Q. Can you be a little more definite about that? You say that he said that the Jews deserved the treatment which they (Tr. 65) received. Did he go ahead and tell you what treatment they had received and why they deserved it?

A. Well, I don't remember specifically that part but, of course, the papers were full and we were taking for granted that our information was correct about the treatment they received.

Q. I mean, do you remember something more he said in that connection?

A. Well, the point that we were discussing was the fact that the Jewish boy and girl, the little fellows couldn't go to school in the usual fashion and that was denied to them because of their tendency to take advantage of the German race.

Q. What did he say about that, if you remember?

A. Well, for the sake of promotion of the German Reich, the Jew had to be subdued; also, that naturally we were going to be confronted with the same situation here faster than any of us realized.

Q. What did he say our government should do about that situation?

A. We should recognize this minority and suppress them.

Q. Suppress them? Did he say that they should be suppressed after the manner that had been done by the German State?

A. I don't think that point was developed.

Q. Tell the Court just what he did say when you say that [fol. 55] he said that we ought to suppress the Jewish minority in this country. Can you give the Court some additional information (Tr. 66) about this conversation along this line?

A. I don't recall any. It was—the general statement is my only memory of it.

Q. Do you remember whether or not he said that the German race was a superior race and that it had a right to do the things—

Mr. Rhodes: (Interrupting) Your Honor, I don't want him to lead the witness that way.

The Court: Sustained as leading.

Q. (By Mr. Phelps) Do you recall any other thing he said with reference to the races in Germany, the dominant race or minorities as to their right?

A. Well, in the discussion of the Jewish point, it had been brought up that the pure German was superior and I asked the question then if the German is superior, why have the Jews been able to get the upper hand, so to speak.

Q. What did he say to that?

A. Well, that came out, that was because of the unusual circumstances following the World War I.

Q. You said that in this discussion, too, that there was discussion of the acts of aggression made by Hitler and the German government against other peoples in Europe. What was said about that?

A. Well, Mr. Baumgartner was well versed on the Nazi propaganda because the answer was always that it was necessary to do this in order to prevent the possibility of English advantage. (TR.67).

Q. Do you remember what he said, any other thing he said in that connection or the substance of his discussion with you, what he said about that?

A. Of, course, the thing I was looking for was justification for that and it developed that the old philosophy of Nitschke was considered to be correct, that if you had [fol. 56] an end that was valuable enough, use whatever means it took to get it.

Mr. Rhodes: Now, if Your Honor please, here is a lecture on what Mr. Baumgartner is supposed to have meant. There is no effort made to say what he said. I don't want to interrupt all the time.

The Court: Objection sustained. State the substance or the words, not your conclusions or deductions. What did he say about the philosophy of Nitschke? I do not know how to pronounce that word but I know what you mean. What did he say about it?

A. Well, that it was correct, that the end justified the means, that force after all was the ultimate deciding factor in the course of the world. I replied then that that was not Christian and, therefore, I wondered why he continued membership in the Christian Church.

By Mr. Phelps:

Q. What did he say to that?

A. Oh, that his membership in the Christian Church was largely because of his interest in the philosophy back of it.

The Court: In what? (TR.68)

A. The philosophy back of it.

The Court: Oh, yes.

By Mr. Phelps:

Q. Was anything said in any of these conversations about the defendant going back to Germany?

Mr. Rhodes: Now, Your Honor, this is constantly leading.

Mr. Phelps: I don't think that is leading.

The Court: I do not think that is a leading question. He calls the witness' attention to the subject but does not suggest what the conversation was. Overruled.

A. Yes, this conversation at my house continued for about an hour and a half, I guess, and it was pretty heated. Our relationship normally is very cordial and after getting all his views and his getting my reply, I said,

[fol. 57] 'Well, why don't you return to Germany if that is the way you feel about it?' Carl said, It takes a lot of money to do that." (TR.69)

FRANCIS MARION SMITH, being produced, sworn and examined as a witness on behalf of the Government, said that he lives at 7219 Bellefontaine in Kansas City, Missouri, and has lived in Kansas City, Missouri, since the spring of 1926, and is employed with the Kansas City Power & Light Company in the Stores Department at 19th & Campbell, the connection between the Stores Department and the laboratory being that the Stores Department material is inspected by the laboratory; that he has been employed there since the spring of 1922; that he is acquainted with the Appellant Baumgartner (TR.70); that he became acquainted with him around 1938 and has continued up until now; that witness did not have any conversation with the Appellant and did not hear any conversation between the Appellant and other people with reference to camparison of the German government and the American government (TR.71).

The witness further stated:

"Q. Did you ever hear him say anything about his family being in Germany?

A. Quite often.

Q. What did he say about that, Mr. Smith?

A. Since his twins were here, he was very fond of them, and I would bring up the subject occasionally, how they were getting along. When they went to Germany, and from time to time, I would bring up the subject of what they were doing over there.

Q. Did you ever hear him give any reason why he sent his family to Germany?

A. No, I don't believe I did.

Q. Did you ever hear him state any reason why his family didn't return from Germany?

A. The best of my recollection was that I heard him [fol. 58] make one statement that is plain in my mind that they were over there about the time war was declared; shortly afterwards I was very anxious to find out what they were going to do, so I asked him one day

what he was going to do, try to get them back, and he said, no, he didn't think he would. I said, "Aren't you worried about them?" "No," he says "not particularly. They are just as safe over there as they would be here." (TR.72)

WILLIAM F. CARPENTER, being produced, sworn and examined as a witness on behalf of the Government said that he lives at 721 Lewis in the suburbs of Kansas City, where he has lived since 1919; that he works for the Kansas City Power and Light Company where he started to work in 1927 as an extra and became permanently employed in 1930 in the Stores Department at 19th & Campbell (Tr. 73); that there he had associations with the defendant Appellant and that Baumgartner, the Appellant, would go to the Stores Department from the laboratory to inspect material received at the Stores Department; that he asked Appellant questions concerning Appellant's family after the war broke out with England in 1939, and that Appellant did not tell him where his family was (Tr. 74); that the witness heard they were back in Germany.

Witness further states that he asked appellant how he happened to send his family back to Germany, and that Appellant answered, "Well, he said he wanted the children to be brought up in German schools," but Appellant gave no reason for that, and that Appellant later said in conversation that "His wife had an estate over there and wanted to settle it up, and I asked him what good it would do them, that they couldn't get nothing out anyway after they got it," to which Appellant made no answer.

Witness further states that at one time he accused Ap- [fol. 59] pellant of being a spy, and Appellant got mad and left, and then came back (TR.75) with a wrench of some kind in his hand and "he said that whoever told me that, he would crack him over the head with that hammer or wrench, or whatever it was."

Witness states that he made the accusation against the Appellant "Well, just from his actions. He used to talk to another German up there all the time, and they was

forever together and they would always talk in German," which provoked the witness to call Appellant a spy.

Witness further stated:

"Q. You must have had something to base that opinion on. I am trying to get you to tell the Court what you base this opinion on or what led you to make this accusation against him?

A. Just merely his actions.

Q. Tell the Court what his actions were. (TR.76)

Q. Well, just the way he acted around there. He just associated with Germans that was there, German people.

Q. Any other actions?

A. No, I don't recall of any."

On cross examination witness stated:

By Mr. Rhodes:

"Q. You don't like the German people.

A. Yes, sir, I like them. I think they are fine people.

Mr. Rhodes: That is all."

HENRY A. CORY, being produced, sworn and examined as a witness on behalf of the Government, testified he lives at 2018 Main Street, Kansas City, Missouri, and is now cooking prior to which time he was in an engineering school known as the Kansas City School of Engineering; that he was instructing in welding in that School, (TR.77) that he knows the Appellant Baumgartner, having become acquainted with him in the Engineering School, and that the Appellant was one of the Directors of the School [fol. 60] while the witness was an instructor; and further testified:

"Q. Did you ever have any conversations with him or hear him in conversations with others—

A. Yes, sir, I have.

Q. (Continuing) Comparing the merits of the American Government.

A. Yes, sir.

Q. (Continuing) The principles of the American Government with the principles of the Nazi state under Hitler in Germany?

A. Yes, sir, I have.

Q. Will you tell the Court what was said in those conversations, the substance of them, as you best remember.

Mr. Rhodes: What was that date?

By Mr. Phelps:

Q. What years?

A. In 1937, mostly and 1938.

Q. 1937 and 1938. How often would these discussions take place, Mr. Cory?

A. Well, that would be hard for me to say now. I heard several of them and I didn't engage much in the conversations, but I heard several. (TR.78)

Q. Can you tell the Court about how often the defendant in his capacity as a director of the school would come down there?

A. Well, a good many times. It would be almost every day—two or three times a week.

Q. Would these discussions or conversations take place on each occasion?

A. No, I don't think so. I wasn't in the office each time that he was there, of course.

Q. Well, I mean on each occasion when you were present.

A. No, not every occasion.

Q. Well, about how frequently would they come up?

A. Oh, I would say I heard perhaps a dozen or more. I wouldn't be positive.

Q. During the years 1937 and 1938?

A. Yes.

[fol. 61] Q. Now, will you tell the Court, please, the substance of those conversations and what the defendant said with reference to the matters I asked you about in my question?

A. Well, all that I have gathered is that the German race was much superior to our people here, the idea was all wrong here and the idea in Germany was right.

Q. Tell the Court the substance of what was said. You said you got that or you gathered that. You made some statement similar to that.

Mr. Rhodes: May I interrupt you? Did I understand you to say that Mr. Baumgartner said that?

A. I gathered that. (TR.79)

Mr. Rhodes: Well, what did he say?

A. That is a long time back to remember an exact statement.

By Mr. Phelps:

Q. You don't have to remember the exact words, but tell the substance of them.

A. Well, our Government was ridiculed and the German Government was upheld, it was the right form of government." (TR.80)

ROBERT E. NESTEL, being produced, sworn and examined as a witness on behalf of the Government, testified that he lives at 5233 Prospect in Kansas City, Missouri; is a United States citizen but was born in Germany, (TR81) being naturalized, he thinks about 1932; that he is in the business of pattern making, and his business is located at 21st & Burlington, North Kansas City, where he is chief pattern maker; that he has met the appellant three or four times, maybe five times; that Appellant came to witness' place of business sometime the latter part of 1938 (Tr. 82); and witness further testified:

A. Well, he came by there, yes he came by one evening. I was working at home at that time. I had a little shop in the basement, he came by, I was eating in the kitchen, at supper, and he came in there and started to talk and I [fol. 62] was busy and he kind of wanted me to join up the Steuben Club, and, of course, I wasn't much interested. I had something else to do. I didn't pay much attention to it and I went on downstairs and went on working so he talked a few words more to my wife and that is all. (TR. 82)

Q. Now, you say he asked you to join the Steuben Club?

A. Yes.

Q. To become a member of that organization?

A. Yes.

Q. Did he give you any reasons for wanting—

A. (Interrupting) No, he didn't give me exact any reasons. He just wanted us to join up.

Q. Did he say why he wanted you to join the Steuben Society?

A. I guess he just mentioned it because I came from the Old Country, too, and he wanted to start some conversation, I don't know.

Q. Did he tell you for what purpose he wanted to promote the growth of the Steuben Club?

A. Well, I asked him what was the idea and he just said some kind of gathering, just a gathering of the German race, I guess, I don't know. I never went there. I don't know the reason for it.

Q. Well, did he say anything to you about trying to promote unity in the German people?

A. Yes, he tried to tell me the German people should stick together more. And I didn't pay much attention to him and he got a little sore at me, I imagine, I don't know.

Q. What makes you think he got a little sore at you?

A. Well, he kind of talked a little bit sharp at me and that is when I quit and went downstairs again.

Q. Now, in connection with this statement he made to you about (Tr. 83) the Germans sticking together, tell the Court just what he said about that.

A. I really don't recall the way he said it.

[fol. 63] Q. Not his exact words, but the substance of it?

A. He just mentioned to me that I was to join up the Steuben Club and I couldn't see no reason why to join.

Q. I mean with reference to the German people or people of German extraction sticking together, what did he say about that?

A. Well, he gave me a German expression, a German name.

The Court: What was the German?

A. Schweinhund. Because I wasn't interested. I guess I didn't listen enough to it.

By Mr. Phelps:

Q. I don't know that I understood you myself, did he understand this was an epithet he called you, a name he called you?

A. Well, he didn't exactly call me. It just means the German people.

Q. He spoke of you and the German people who were not interested in sticking together, is that it?

A. That is right.

Q. What does that mean, do you know?

A. I really can't translate that word, the meaning of it.

Q. One of these words I can't pronounce in German, but the first means a swine or hog, doesn't it?

A. Yes, that is what it means. (TR. 84)

Witness further testified:

"Q. (interrupting) Let me ask you this question to see if I understand you. Did he tell you, or state to the Court whether or not he told you that he wanted to promote cohesiveness and organization of the German Groups in order to keep America from going to war against Germany?

A. Well, that is the way I understood it.

Mr. Rhodes: Well, it is leading, if your Honor please.

The Court: It is leading.

Mr. Phelps: It is leading, but this witness, Your Honor [fol. 64] please, doesn't understand English very well and I am simply trying to get it more to the Court. I will necessarily have to lead him.

The Court: I understand your purpose.

Mr. Phelps: I necessarily have to lead him a little, Your Honor.

The Court: I wouldn't think so. I imagine he understands the English pretty well." (Tr. 86)

G. E. Carrico, being produced, sworn and examined as a witness on behalf of the Government, says that his full name is Golden Earl Carrico, and that he lives at 6922 Monroe, Kansas City, Missouri, and has lived in Kansas City and Independence, Missouri since 1924; has been in the mechanical business all that time with the exception of two years when he was with the Kansas City Star; and that for the last two years he has been employed with the Ted Hill Chevrolet (Tr. 87), during which time he became acquainted with the Appellant while rendering services on his car,

and saw him five or six times from July, 1938 until sometime in 1939; that he engaged in conversation with the Appellant about the time Germany invaded Czechoslavakia sometime the latter part of 1939, and witness further said:

"Q. Now, what was that conversation? Just tell the Court exactly what was said as you remember it.

A. Well, how the war subject came up I can't recall; however, I said to the man that I thought it was brutal the way Germany was doing those little countries, and Mr. Baumgartner said he didn't think so, that he was for it. I said they should take him out and hang him. (Tr. 88)

Q. Take who out?

A. Hitler. And he said, "If you knew Mr. Hitler like I do you wouldn't say those things." He said, "I am for him 100 percent."

[fol. 65] Q. Now, was there any other conversation then following that?

A. No, a customer drove in and took my attention away from the conversation and he paid his bill and left. Other than that, that is all that was said.

Q. Well, did you say anything further to him after he told you that he was 100 percent for Hitler?

A. I told him if I felt like that I would go over there and live with him.

Q. What did he reply to that?

A. He didn't reply, he got red in the face and a car drove in at the same time and I went on about my work.

Q. Do you mean he got angry, is that what you mean?

A. He got very angry, it looked to me like.

Q. Now, did you have any other conversation?

A. No, sir.

Q. Of this nature?

A. No, sir.

Q. And your best recollection is that that was about the time or following—

A. (interrupting) The invasion of Czechoslovakia. (Tr. 89)."

D. C. Hawley, produced, sworn and examined as a witness on behalf of the Government says that he lives at 7423 Holmes Street, Kansas City, Missouri, and has lived there for twenty-three years; that he is an employee of the

Kansas City Power & Light Company as Assistant Superintendent over underground system in which position he has been for about ten years; that he is acquainted with the Appellant, becoming acquainted with him about 1935 (Tr. 90); that during that time he had a great many conversations with him relative to Germany and Hitler and the new order and the War; that he had occasion to be in the laboratory many times and always he talked with Appellant, the conversation generally holding pretty closely to [fol. 66] the subject of conditions in Germany compared to conditions in the United States; that the substance of the statements of the Appellant was to the effect that Germany with her present Government under Hitler was "going places, and any [occurances] that took place either in this country or in Germany, direct comparisons were drawn and Mr. Baumgartner felt that it would be handled in a far more efficient and better manner—by the Government of Germany than by the Government of the (Tr. 91) United States."

Witness further said:

A. Another conversation that rather stands out in my memory, I don't remember the exact substance of the conversation except that it was general as to the conditions and he made the statement that what difference did it make to the people of the United States whether they were being governed by England or whether we would be governed by Germany. He didn't see what interest we would have in entering the war, what difference it would make to us in the final outcome if we were governed by Germany, as he said that we were now controlled by England.

Q. Do you remember the substance of any other conversation in which he praised Hitler or his New Order?

A. We had a good many conversations and arguments. They weren't exactly arguments, at that time. I remember one time he was criticizing the government of the United States and lauding the government of Germany and he got rather critical and I made the statement to him at that time that I didn't see where an American, a naturalized American citizen had any right to criticize the government as we native born Americans because we criticize it in a different manner, and it didn't sound well coming from a

[fol. 67] foreigner to criticize the government the way he was doing it.

Q. All right. (Tr. 92)

Mr. Rhodes: Excuse me a minute; the witness hasn't said anything except what he said. He stated a conclusion about what the defendant said, criticizing and lauding. I would like to have him state what was said. I move to strike it out.

The Court: He has given the substance last of what he said to Mr. Baumgartner. What did Mr. Baumgartner say to you then, if anything?

A. Mr. Baumgartner, of course, didn't agree with that. I don't remember what he said.

Mr. Rhodes: You don't remember what he said?

A. Not exactly except that he thought I was wrong.

Mr. Rhodes: All right.

By Mr. Milligan:

Q. Do you remember any other statement that he made in substance during those years from 1935, when you became personally acquainted with him, relative to Germany or relative to the United States?

A. Our conversations were—there was a great deal of sameness about them. They were on different subjects but the general subject was always the same and that is the government and what Germany was doing and what the United States should do, he taking one side and I taking the other.

Q. Who brought up this subject in all these conversations?

A. Well, I should say for the most part Mr. Baumgartner. I possibly did in some instances. (Tr. 93)

Q. Did you have any other conversation with Mr. Baumgartner about the subject of lead?

A. Yes, I recall one instance in which we had the occassion to take a chief engineer of one of the big cable com- [fol. 68] panies to the laboratory to discuss the quality of sheath on lead cable. There was some question about its meeting our specifications and it was an important matter and this engineer had come from New York to investigate.

We discussed the general make-up of the cable for sometime and finally got around to the subject of the lead sheath on the cable. The chief engineer made the statement that his company procured practically all of their lead from such and such an area and it was all virgin metal. Mr. Baumgartner immediately took the conversation from there and asked the engineer a great many very intelligent and pertinent questions about the source of this metal, where the greatest part of the metal in the United States was mined and refined, what proportion of it, what stocks they had on hand, where else was there big lead mines and so forth. That continued for sometime before I was able to get the conversation back to the subject at hand.

Q. Was there anything unusual in that?

A. It was very unusual because it had nothing to do with what we were talking about because the conversation could have been or the matter should have been closed on the statement that the engineer made that he procured his lead from such and such a company. That wasn't really important, anyway. (Tr. 94)"

JOSEPH A. SECK being produced, sworn and examined as a witness on behalf of the Government says that he lives at 7712 Magee Street in Kansas City, Missouri, and is in the paint manufacturing business as vice-president of the Great Western Paint Mfg. Corporation, and his office is in Missouri; that he became acquainted with Appellant in February, 1932, when witness moved to 5327 Olive, adjoining the residence of the Appellant; (Tr. 95) that in about 1933 or 1934 Mrs. Baumgartner's mother visited [fol. 69] this Country from Germany, prior to which time witness' conversations with Appellant were on the subject of politics, "and that sort of thing were more or less in a general way," but after Mrs. Baumgartner's mother visited this Country "Mr. Baumgartner became pronounced in his attitude towards the Nazi Government." (Tr. 96)

Witness further stated:

By Mr. Milligan:

"Q. In substance, now when statements were made by him which reflected his attitude?

A. After her visit, he praised the work that Hitler was doing over there in bringing Germany back, on repeated occasions. He at odd times went back over the whole history of the post-war conditions in Germany and told how by the Versailles Treaty Germany had been bled white and that Hitler stepped in and stopped all this. In other words, he stopped the payments of these reparations which were disastrous, as far as Germany was concerned. He told of the unemployed people over there and he told that how by what Hitler was doing that employment was good in Germany and that conditions were daily getting better.

Q. That line of conversation kept up from 1934, you say?

A. Yes.

Q. Until—

A. (Interrupting) It kept on until the first part of, I should say, around January 1, 1937, at which time we left this address and my contact with Mr. Baumgartner—I don't believe that I saw him between then and December, 1939.

Q. During that period of years from 1934 to 1939, is that when you moved?

A. That is right.

Q. Tell the Court in substance just exactly what, as near as you can remember, he said about Hitler and the German Government or the New Order.

A. Prior to the time that we left, which was the be-[fol. 70] ginning of 1937, Hitler's aggressive—had done very (Tr. 97) little aggression except at the Ruhr. If my memory serves me right, that is correct, and he justified his action entirely in doing that because of what he contended the Versailles Treaty had done to Germany. The principal conversation really was in 1939, that is, from the standpoint of a discussion so far as Germany and Hitler was concerned.

Q. You did have a conversation after 1937?

A. I did, in December, 1939.

Q. What did he say about Hitler or the German Government or the New Order in that conversation, in substance?

A. He more or less reviewed the whole history of the German situation from World War I. As a matter of

fact, we talked for quite some time, Mr. Baumgartner denounced the Versailles Treaty.

Q. You said that a while ago.

A. I see: I am sorry.

Q. That last conversation is what I am asking you about, in 1939.

A. He told then the inflation that took place over in Germany before we left over there. He told how he had gotten his pay check, went down as fast as he could to cash it and by the time he got there, it merely bought him a tube of toothpaste and a tooth brush. Then he got over to what Hitler was [going] for Germany now, how she was rebuilding her industries and how she had stopped this drain on German finance and how in general she was reestablishing herself. At that time, I (Tr. 98) do not believe we had any conversations particularly—that is, about Hitler's aggressive action in those other countries.

Q. Had they been entered at that time?

A. Frankly, I do not remember. I do not think we had a conversation about it.

[fol. 71] Q. You said the early part of 1939.

A. It was in December of 1939 when we talked.

Q. In December of 1939?

A. Yes, sir.

Q. Well, that was after the war; the war was in September, 1939.

A. That is right. It would have been after that, although we did not discuss that in this meeting other than maybe in some little general way, all of which I do not recall.

Q. Did you have any other conversation with him after December, 1939?

A. No.

Q. Relative to these matters that I have called your attention to?

A. No, no conversation.

Q. Now, Mr. Beck, do you know whether or not his wife went back to Germany?

A. Yes, sir, I do.

Q. When was that, if you remember?

A. She went back in May, 1939, as I recall it.

Q. Do you know what the occasion was for her returning to Germany?

A. Yes, I believe I do. She had long been wanting to visit her mother and as I recall it, her mother had not seen the twin children and that was one of the principal reasons for her going back." (Tr. 99)

Witness further stated:

By Mr. Milligan:

Q. "Did you have any conversation with Mr. Baumgartner relative to his wife returning or wishing to return?

A. Yes, I did. He told us that when war was declared between Britain and Germany, that as she put it, they became panicky and wanted to return. She cabled him and wanted to return and he cabled back and told her that she should remain there for the balance of your stay, that if she were not on the front, that she would be as safe there as she would be here.

Q. On her returning to Germany, what did he do as to his furniture, or do you know?

A. Yes, I do know. They stored most of it except a [fol. 72] few pieces, I believe they left with friends. They left one piece with us.

Q. What was that, a sewing machine?

A. Yes, sir.

Q. What was the understanding about the sewing machine?

A. Well, the understanding was that if she came back, she (Tr. 100) would want the machine. We would merely keep it while she was gone and if she decided not to come back, we were to pay Mr. Baumgartner $12.00 for the machine." (Tr. 101)

Joseph F. Praschma, being produced, sworn and examined as a witness on behalf of the Government says he lives at 3225 Agnes Street, in Kansas City, Missouri; that he is now living in the Hotel in Kansas City, "the Convention Hotel;" that he is now in the service in the United States Army where he has been about six weeks; that he was born in Muested, Germany; that he is now a United States citizen and was formerly a German citizen and had the title of Count and Baron, (Tr. 102) in Silesia, Germany; he has lived in Kansas City about sixteen or

seventeen years; and when he came here as a citizen of Germany he was naturalized in 1935; that he became acquainted with the Appellant about three or four years ago where "I met him several times at Mr. Schwedler's at 3334 Euclid and once at the Turner Hall at 15th Street and Pasco, (Tr. 103) and that he thinks he met Appellant the first time at Mr. Schwedler's, 1938 or 1939; that he had conversations with Mr. Baumgartner and with others in witness' presence relative to Germany and to Adolf Hitler and his New Order, and that Appellant Baumgartner was very much in favor of Adolf Hitler and "very much against our Country," and that "Well, about every word he said was very much in favor of Adolf Hitler and very much against our Country," and "He (referring to the Appellant) said always how great Hitler was and [fol. 73] how much he thought about Hitler; on the other hand, in his speech, you had the impression that he didn't think very much about our Country." (Tr. 104)

Witness further testified:

Q. Tell us what he said?

A. Well, he said, for instance, our Country were full of hypocrites and all kind of things. He was very much against the Jewish people, too, as far as I remember.

Q. Was this conversation that you are relating at the Schwedler house?

A. That was at Schwedler's house, and I remember once in the Turner Hall.

Q. In other words, there were two different conversations?

A. Two different conversations. I guess I met him several times over at Schwedler's.

Q. Did you say anything to him when he was talking about your adopted country?

A. Yes. I didn't agree with that.

Q. Did you know that he too at that time was an American Citizen, had been naturalized?

A. No, I didn't know that, but I was surprised after I heard that later on.

Q. You were what?

A. I was surprised when I learned that later on he was an American citizen. Of course, I didn't expect him to do that.

Q. You didn't expect that?

A. I didn't expect him to do that while he was an American citizen.

Q. Do you mean talk that way?

A. Talk that way about our Country.

Q. Have you talked to Mr. Baumgartner since the New Year's Party, I think it was, at the Schwedler home?

A. I do think that was the last time I met him. (Tr. 105)

Mr. Rhodes: What year was that?

A. That must have been either 1938 or 1939.

Mr. Rhodes: New Year's in 1938 or 1939?

A. Either New Year's Eve or New Year's Day.

[fol. 74] Q. Who was present there at the time of this conversation?

A. At the conversation was Gus and Otto Schwedler present, and my wife.

Q. Did they participate in this conversation?

A. Well, they were disgusted over the conversation, too.

Q. They were disgusted?

A. Yes, sir.

Q. You mean at what Mr. Baumgartner said?

A. Yes, sir." (Tr. 106)

Bernard Mueller being produced, sworn and examined as a witness on behalf of the Government said that he lives in St. Louis, Missouri; is a beer salesman for Anheuser-Busch, and has been for ten years; has during the past five years been making Kansas City. Kansas City was formerly a part of his territory but now he is in the east; that he became acquainted with the Appellant Carl Baumgartner about the end of September or the beginning of October, 1938, where he met him at the home of Gustave Schwedler on Euclid Avenue, Kansas City and met him there several times (Tr. 107) That he conversed with Baumgartner and others relative to Germany, Hitler, and the New Order and Baumgartner

emphasized to him the wonder of conditions in Germany; that Hitler was the Saviour of Germany, and "he does wonderful things for Germany, put Germany on its feet." (Tr. 108)

That always when witness conversed with B, conditions in Germany and such questions always came up; his last visit was at the end of January or beginning of February, 1939 when B took witness to his hotel and during the drive said to him, "you know or should know that the democracies are on the way out. Look at Germany under Hitler. What a wonderful country that is," with which witness says he disagreed, and Baumgartner said, "During these years look at the American Army, look at the German Army; we go places now and the day will come that Germany will be the dominant war power and then America has to listen to Hitler," which witness says he resented and left the automobile and hasn't seen [fol. 75] Baumgartner since (Tr. 108)

On cross-examination witness stated that he is not a naturalized citizen but is applying for naturalization; that he is 66 years of age. (Tr. 109) That he came to America in 1908 and that he applied for naturalization two years ago and that during the time he has been in America he has travelled and has lived in St. Louis, Pittsburgh, Pennsylvania, Chicago, Minneapolis, Kansas City and Cincinnati; before the last ten or eleven years he was in the banking business in St. Louis which was during the time of prohibition, prior to which prohibition era he was a beer drummer; (Tr. 110) that he was a member of the Steuben Society in 1940 and that he "quit" because it is one of the requirements for membership in that society that a member be a citizen and that is the reason he quit. Asked how he got in without being a citizen he said, "I don't know, friends." (Tr. 111)

R. C. Furr, being produced, sworn and examined as a witness on behalf of the Government, testified that he lives at 801 E. 89th Street Terrace which is outside of the city limits of Kansas City, Missouri and is in the oriental rug business at Emery, Bird, Thayer, Dry Goods Company where he has been associated since 1923, and is a member

of the First Baptist Church; that he is acquainted with Baumgartner, Appellant, and became acquainted with him when he became a neighbor of his on Olive Street, which was about 1938 or 1939 (Tr. 112) That he lived as a neighbor about a year and is still acquainted with him.

[fol. 76] Witness further said:

"Q. Have you ever been in any conversations with the defendant with reference to when such subjects would come up for discussion as the organization of the German government, the work of the German State, as compared with a Democratic form of government?

A. Well, we never discussed that phase very careful. We did discuss governments generally.

Q. Do you recall conversations in which there were compared the relative merits of the Democratic form of government with a government organized as the German State is?

A. Well, we did discuss, I believe, in this manner, that this Country was quite lax in executing whatever they wanted done. It took us so long to get a thing done. Our form of government wouldn't permit action and the type of government that they had in Germany, why, one man's word was law and that settled it. (Tr. 113)

Q. You say that was the discussion?

A. We had discussed that, I am sure, several times.

Q. Will you tell the Court whether or not that was said by the defendant, Baumgartner?

A. Yes, sir. (Tr. 114) • • •

Q. During the year 1940 and 1941 do you remember any criticisms made of the American government and its operations by the defendant?

A. I do remember that Mr. Baumgartner stated at one time that our courts were being a little bit crowded with a nationality that was not all friendly with Germany.

Q. Just tell what he said.

A. Well, he said—well, in other words, he said the Jewish people were creeping into our courts and that this country was being influenced a great deal by England and that we didn't have much choice about the matter, that we were pretty well linked with England and by and by we would probably see the results.

Q. Now, while you are on the subject of the Jewish race, Mr. Furr, what did he say about that race with reference to the British government?

Mr. Rhodes: If your Honor please, that hasn't anything to do with this case.

Mr. Phelps: I think it does, your Honor.

The Court: Well, we will hear what it was and then will determine whether it has anything to do with the case. We can't tell before we hear.

A. May I have that question again? (Question read.)

A. Well, he remarked that the British government had a lot of Jewish influence. He remarked about the Rothchilds and the Bank of England being pretty well controlled by Jewish influence and, of course, when the Jewish people were persecuted that rather pleased him.

Mr. Rhodes: I beg your pardon.

A. He was—

Mr. Rhodes: (Interrupting) When they persecuted that pleased—

A. (Continuing) He was elated over the fact that they were getting what was coming to them.

Mr. Rhodes: What did he say? I object to that if your Honor please. Let him state what Mr. Baumgartner said.

The Court: Sustained. (Tr. 114-115)

Witness stated further:

"By Mr. Phelps:

Q. Well, did you have any conversation with him with reference to the policy of the American Government under the lend-lease bill supplying new nations and other forms of help to the democracies?

A. None except that we were being led blindly into this conflict that I can recall." (Tr. 117) * * *

[fol. 77] Dr. Bert Maybee, being produced, sworn and examined as a witness on behalf of the Government, testified that he lives at 6646 Main Street. Is a dentist by profession with offices in the Bryant Building and knows Ap-

pellant very well; that he became acquainted with him in the Congregational Church in 1936 or 1937 which church is located at 65th and Brookside where the witness is a member of the Board of Deacons; that he knew the Appellant from that time until Germany invaded Poland. (Tr. 118)

Witness further stated:

"Q. Did you ever have any conversations with the defendant with reference to the qualities of government organized after the fashion of the German State with one man at the top, whose word was final and a democratic government?

A. We argued a whole lot. He was always pro-German and—

Mr. Rhodes: (Interrupting) Well, now, if Your Honor please, that again is a conclusion.

The Court: Sustained, stricken out. You mustn't draw conclusions, Doctor, but you say what he said and we will draw conclusions.

A. I can quote him.

The Court: That is right. That is fine.

A. He asked me one day where I was born. I told him Laclede, Missouri. He said where was your father born? I said the same house. He says, "Where was your grandfather born?" I said the same house. He says, "Where was your great grandfather born?" I said in England. He says, "Well, you are pro-English, then, just like I am pro-German, and I admire you for it." That is word for word on that.

By Mr. Phelps:

Q. To get back to my original question, will you read [fol. 78] that, please? (Question read.) Will you give me the substance?

A. We talked frankly, he knew he couldn't do otherwise; it was on a friendly basis however. He did point out the Hitler form of government, how Hitler had done it and look what a bungling job we had done with it. He said we didn't (Tr. 119) have real freedom of the press or freedom of religion either one in this country.

Q. Did he make any statements about the policy, the established policy of the American government in the Lend-Lease Bill?

A. Not that I know of. I haven't seen him since 1939. I don't know whether he did or not.

Q. You say your last conversation with him was about the time that Germany invaded Poland?

A. He called me on the telephone that day.

Q. Did you discuss with him the previous acts of aggression on the part of Germany against other nations in Europe prior to the invasion of Poland?

A. Yes.

Q. What did he say about those?

A. He said Hitler was justified in it.

Q. What conversation did you have with him on the day that Germany invaded Poland?

A. Well, that was just a telephone conversation. He called me up and said that Germany was doing the right thing, they had that territory coming and that England wouldn't do anything about it; they never had done anything and he didn't think they would this time either. I believe that was on a Saturday.

Q. You never had any further conversation with him since then?

A. No, I haven't seen him since then." (Tr. 120)

Earl Hovey, being produced, sworn and examined as a witness on behalf of the Government, testified that he is a [fol. 79] lawyer, living at 1017 Arno Road in Kansas City, Missouri, and has been a resident of Kansas City, Missouri, for twenty or twenty-three years; that he does not know the Appellant, Baumgartner, but that he heard him make a public address at the South Side Business Mens Association sometime in April, 1938 (Tr. 121) at the Park Lane Hotel and witness described the address as follows:

"A. He prefaced his remarks by stating that he was not criticizing the government of the United States, and proceeded to tell of his experiences in Germany. I believe that he was an officer in the German Army. And then proceeded to tell of the virtues of the form of government that was then prevalent in Germany, stating definitely that women and children had butter on their bread, I believe,

where they had not had such before Hitler came into power. He stressed perhaps indirectly, but told us of the value of a government of that type and what was being done as the result of it. I don't recall his precise verbiage. I couldn't do that.

Q. What do you mean by a government of that type?

A. Headed by a single man as against our form of government.

Q. Was there any adverse criticism of Hitler or Germany in that speech? A. None whatsoever.

Q. Did he say things that you can remember to justify all of the acts of the Germans, that they had committed up to that (Tr. 122) time?

A. No, I do not recall any fact that I could tell you of now." (Tr. 123)

A. A. Roessel, being produced, sworn and examined as a witness on behalf of the Government, testified that he lives at 4704 Holly, Kansas City, Missouri; is an interior dec- [fol. 80] orator, and has been in that business for twenty years; he was born in Germany, but is now a naturalized citizen being naturalized in 1932; that he met Appellant Baumgartner once in the house of the witness which was about two and a half years prior to November, 1942; (Tr. 124) That he met Appellant at the witness house at a meeting of an organization known as the DAB which letters stand for Deutch Amerikanische Berufgemeinschaft and which means either German American Trade Union or Vocational League or something like that. (Tr. 125)

That Mr. Fritz Laque presided at the meeting and all present got up and gave the Hitler sign and started singing but "what they sang I don't remember because I got good and mad about that time." The Hitler sign referred to was the extended right arm. Witness further stated that the German national anthem, Deutschland Uber Alles, was sung during the evening; that they also sang the Horst-wessel song during the meeting; that witness could not tell for sure that Appellant Baumgartner participated in the Nazi salute or in the singing of the German National anthem or the Horst-wessel song but witness thinks they were all doing it; that there were twelve or fourteen men, (Tr. 126)

and probably that many ladies present at the meeting; that they were seated at the table and all got up and saluted but there were quite a few standing around. (Tr. 127)

JOHN STARKEY, being produced, sworn and examined as a witness on behalf of the Government, testified that he lives at 1414 East 77th Terrace, Kansas City, Mo.; is credit manager for the McClure-Norrington Chevrolet Company and has been in business all of his life in Kansas City, Mis- [fol. 81] souri; he doesn't know the Appellant Baumgartner, but has seen him at a meeting of the South Kansas City Business Men's Club around April, 1939, where Baumgartner was the principal guest speaker, and witness says that Appellant Baumgartner, said about Germany (Tr. 128) that it was a "fine type of Government" in Germany at that time, that the one man government they had Baumgartner was very much in favor of for the reason that witness said that when the Government wanted to get anything done they didn't have to go through a lot of red tape to get it done and it was just one man that could give the orders and it was done.

LOUIS M. SPENCE, being produced, sworn and examined as a witness on behalf of the Government, testified that he lives at 431 West 68th Street, Kansas City, Missouri, (Tr. 129) That he is secretary-treasurer of the Safety Federal Savings and Loan Association; that he had a conversation with Appellant Baumgartner in 1939 and that Appellant said to him at a church dinner where they were seated next to each other that he, Appellant, had been up pretty much all the night before listening to a speech by Hitler and what a wonderful speech it was.

TED HILL, being produced, sworn and examined as a witness on behalf of the Government, testified that he lives in Hickman Mills, Missouri; is an automobile dealer; (Tr. 130) and that he became acquainted with Appellant Baumgartner and heard Appellant speak at the South Kansas City Business Men's Club, the gist of which remarks witness says were as follows:

"A. Well, the gist of his speech, he was the guest speaker of the day at the club, and the gist of his speech [fol. 82] was Germany after the World War; he talked about the valuation of money in Germany became worthless; that outside people from other small countries near there, possibly Jewish people and other people as well, came into Germany and had some money and bought up and controlled most everything in Germany and then the event of the change of power over there, that unemployment had ceased and things seemed to be going along o. k. since the change in power.

Q. That was the Hitler change in power?

A. That was the Hitler regime, yes.

Q. What did he say in that regard, in substance, about Hitler?

A. Well, the gist of the talk, as I gathered, was that in his opinion and from his remarks, that everything that was being done by Hitler was O. K. He didn't say it literally, in so many words, but—

Q. (Interrupting) In substance?

A. In substance." (Tr. 131)

Robert Barton, being produced, sworn and examined as a witness on behalf of the Government, testified that he lived at 1015 West 70th Street but now lives in Lawrence, Kansas, where he is a student at the Kansas University Law School; that he is 20 years of age; was a member of Carl Wilhelm Baumgartner's Sunday-School class at the Country Club Congregational Church (Tr. 132). Witness thinks that was in the year 1937 or 1938 when he was a senior in high school.

Witness further stated:

"Q. In his instruction to the Sunday School class, I will ask you to tell the Court in substance the statements made by Mr. Baumgartner relative to the German Government, Adolf Hitler or his New Order, in substance.

A. Well, I don't recall at any time he said anything or [fol. 83] tried positively to convert us to the Nazi Order. However, several times it was brought up, certain things that were going on in Germany and the destructions of some of the churches. Mr. Baumgartner at that time said that we didn't have exactly the right slant on the situation.

Q. That you boys didn't have? A. That is it.

Q. What else did he say that you should do, if anything?

A. Well, he said—he did say that—we asked him why he didn't think that we had the right idea about it and he said well, that he had been listening to the radio broadcasts in Germany and they presented an entirely different picture, that is, the German radio broadcasts, and we said, "Is that so?" We asked him how he listened to it and he said he had a radio and he gave us the wave lengths that he did listen to the German radio just as a matter of information.

Q. Did he advise you that you should listen to the German broadcasts to get the proper version?

A. Yes, for the proper information; he said that the German Radio put out the proper (Tr. 133) information." (Tr. 134)

JOSEPH F. PRASCHMA, resumed the stand, having been previously sworn as a witness on behalf of the Government and testified further as follows:

That he is 49 years seven months old, that he came to America about sixteen or seventeen years ago; that he was a Count in Silesia; (Tr. 136) that his parents are both dead, his father having died in 1936; that he saw his father once after he came to this Country. He denied that his father had disowned him; that his father did not send him money to America because he was working here but that [fol. 84] his mother sent him money without his father's knowledge; that when he came to this country he was received by the German ambassador; that he was related to the former Austrian Kaiser; that he occupied a very high social and financial position in Germany; that he didn't squander all of his family's inheritance but "well, I didn't spend all of it. They had enough." He denied that he was constantly in trouble. (Tr. 137) That he worked first in this Country for the National Suit and Clothing Company, later on in the fur business, and then in the restaurant business. In the latter business he was a bartender and took care of the grill, first at Frank Wachter's restaurant, and then at the Hillcrest Country Club; that he married here and a child was born of that marriage; asked if he was divorced he said:

"A. Well, I took the divorce, of course, that made it easier for me to go to the Army." He stated he had been divorced about four months previously and further said: "I divorced my wife because they wouldn't take married men in the Army and I intended to marry my wife back." Witness further stated that he has not yet remarried his wife. (Tr. 138) That he denied his wife divorced him because he didn't support her; that he was naturalized in 1935; that in the last war he was a first lieutenant and then a captain in the cavalry in the German army. (Tr. 139)

After the world war his father sent him to Old Mexico for five or six years and then back to Germany for a few weeks after which time he came to the United States; that he was in Egypt before the last war; that his father sent him several places besides Egypt, Old Mexico, and the United States; (Tr. 140) that in the last war he was mostly [fol. 85] on the eastern front and served during the duration of the war.

Eleanor Kramer, resumed the stand, having been previously sworn as a witness on behalf of the Government and testified further; that the latter part of 1939 or 1940 she had a conversation with Appellant Baumgartner (Tr. 141) with reference to the policies of the American Government and the German Government and that Appellant Baumgartner said Germany is right and we (America) are wrong in forms of government and that Baumgartner said "if Roosevelt had his way, he would push us into the war for capitalistic gain."

Witness further testified:

"Q. Now, what were you talking about when you say Mr. Baumgartner said Germany is right and we are wrong in the form of Government?

A. Well, that was the argument we had when he said that there was not freedom over here of the press and speech, and as I said yesterday, about talking on the street, and the unemployment question and that their form of government was better than ours, it was in that conversation. (Tr. 142)

Q. Related to what, their form is better than ours in what particular? A. Just as a form of government.

Q. Just as a form of government. Was he then talking about the present Hitler form of government? A. Yes.

Q. Or was he talking philosophically about some other kind of government that had been in Germany? A. No.

Q. He was talking about Mr. Hitler's Nazi form of government? A. Yes, sir.

Q. You are quite definite that he said that that form of Government is better than ours? A. Yes, I am.

[fol. 86) Q. Now, I ask you to remember particularly because what you say, you see, has an effect on a man who is charged with creating a fraud on this Court when he was admitted to citizenship in 1932. We can't bandy words around. A. No, I realize that.

Q. (Continuing) With abandon. We must know what we are talking about. You realize that, do you? A. Yes.

Q. You realize also, don't you, that there are many millions of people in this country who shared the same views about Mr. Roosevelt. You know that, don't you?

Mr. Phelps: I object to that.

The Court: Overruled.

Mr. Phelps: That is argumentative.

The Court: No.

A. I do. (Tr. 143)

By Mr. Rhodes:

Q. You—

Mr. Phelps: (Interrupting) That is calling for a conclusion on her part.

Mr. Rhodes: No, I am asking for a fact, if she realizes that is true.

By Mr. Rhodes:

Q. You do realize that is true? A. I do.

Mr. Rhodes: Yes, that is all.

Redirect Examination

By Mr. Phelps:

Q. You don't know that many millions of people believe that Roosevelt was trying to push his Country and Our

Country into war for the benefit of the capitalistic class, do you? A. Not that many millions, no.

Mr. Phelps: That is all."

[fol. 87] MRS. JOSEPH A. SECK, being produced, sworn and examined as a witness on behalf of the Government, testified as follows: That she is the wife of Joseph A. Seck; (Tr. 144) that she has resided in Kansas City, Missouri for many years and her husband is vice president of Great Western Paint Manufacturing Company; that she became acquainted in 1932 when she and her husband moved to 5327 Olive Street, with Mr. and Mrs. Baumgartner, where they lived as neighbors for five years; that she had conversed with Mrs. Baumgartner quite often although Baumgartner, Appellant, was often on witness' porch and previous war was discussed; that Mrs. Seck and Mrs. Baumgartner visited back and forth quite often; that Mrs. Baumgartner has three children; (Tr. 145) that she had conversed with Mr. Baumgartner in 1935 in her home; that Mrs. Baumgartner and the Baumgartner children returned to Germany in the spring of 1939 but the conversation she refers to took place in December 1939 when Mrs. Baumgartner and the Baumgartner children were still in Germany; that Baumgartner spent four hours in their home on that occasion.

Witness further said:

"A. The conversation for the most of the evening was by Mr. Baumgartner and he did praise Hitler and the German Government.

Q. Now, I will ask you whether or not he made any statement relative to his oldest child, the daughter who would be thirteen, twelve or thirteen years of age?

A. When I asked about the children, they were, of course, American children, and I was interested to know what they were doing in Germany, and he said: 'Edith has done a very un-American thing, she has joined (Tr. 146) [fol. 88] the Nazi Youth Movement.'

Q. Now, what tone did he use in conveying that information?

Mr. Rhodes: I object to that, as to the tone.

Mr. Phelps: I think it is important.

The Court: Overruled, if she can describe the tone.

Q. Why, the course of the conversation all during the evening was in rather a smug way, speaking in praise of Germany.

Mr. Rhodes: I didn't understand that.

A. The whole conversation during that evening of his praising Germany, its history back to the time of Bismarck and up to the time Adolf Hitler, praising him, was carried on in a smug way.

By Mr. Phelps:

Q. Well, now, this particular statement about his daughter doing an un-American thing, describe that.

A. Well, it irked me very much because he said it in a smug manner. He said—

Q. (Interrupting) What do you mean by "smug", sarcastic?

A. Rather a sarcastic manner. He said, "Edith has done a very un-American thing, she has joined the Nazi Youth Movement."

Q. Now, do you remember any particular statements that he made in his praise of Adolf Hitler?

A. I remember that he said Hitler was a scholar and follower of the great Bismarck.

Q. Now, in that conversation, did he praise the Democracy of the United States, our own Government?

A. No, he did (Tr. 147) not. He said we did not have a democracy in our Country, we had an oligarchy.

[fol. 89] Mr. Phelps: You may take the witness.

Cross-Examination.

By Mr. Rhodes:

Q. Have you ever heard similar sentiments expressed by others, that we do not have a democracy in the United States, that we have an oligarchy? A. I have not, sir.

Q. You have never heard that? A. No.

Mr. Rhodes: That is all.

Richard Benne, being produced, sworn and examined as a witness on behalf of the Government, testified as follows: That he has lived in Kansas City, Missouri since

1921; that he is a retired soldier engaged as rental agent for real estate holders and, in addition, gives military training to high school boys in two different high schools; (Tr. 148) that he retired from the United States Army in 1921, in which army he had served, including double time, thirty years; that he met Appellant Baumgartner about 1938 or 1939 when he was invited to join the Steuben Society of America of which club he thinks appellant was then secretary; that the Steuben Society takes in only American citizens of German descent.

Witness further states:

"Q. Well, now, I will ask you to state to the Court what conversation you had with Mr. Baumgartner?

A. The only conversation I ever had with him was with reference to business with the society and the conduct of the administration of the society. (Tr. 149)

Q. Well, now, what, if anything, was that?

A. Well, for instance, at one time they had three [candidated] to join the Steuben Society of America and the [fol. 90] president of the society was supposed to appoint a committee to investigate those candidates, to ascertain whether or not they were proper members to be inducted into the society. Instead of that being done, Mr. Baumgartner as secretary appointed himself a committee and investigated the men and reported to the society, and I had an argument with him with reference to that, told him it was improper and not according to the constitution and by-laws of the society.

Q. Now, did you have any conversation relative to the admission of aliens?

A. At one time he insinuated and wanted to go up to the German House on Troost Avenue and get some of those to join the Steuben Society to enlarge the membership and I told them that was not permitted according to the constitution, that no aliens were allowed in the society and if I remember correctly, he made the remark, "We make good citizens out of them."

Q. In other words, as I understand, he wanted in violation of the constitution and by-laws of the Steuben Society to bring in aliens into that group? A. Yes, sir.

Q. Did you have any conversations with him after that argument?

A. Well, let's see, the only thing I think of, I made the (Tr. 150) remark to him once that we didn't want no fuehrer in the society or a dictator, something like that. I was under the impression that that was what he was trying to be, absolute ruler of the society."

On cross examination witness stated that Gus Schwedler invited him to become a member of the Steuben Society and that he joined about 1938; that he was born in Germany and became a citizen of the United States about 1902 or 1906; (Tr. 151) that he entered the U. S. Army in 1898 in [fol. 91] the Spanish-American War; that the German House on Troost Avenue that witness spoke of is a club where all the various German Organizations meet "because most of them are citizens of this Country, but there are some of them are not citizens, but they are still permitted to join those organizations."

Witness further stated:

Q. "Well, the fact that Mr. Baumgartner wanted to go to the German House to seek out members for the Steuben Society, if I understood your conclusion that would mean that he wanted to seek out aliens?

A. Well, those as well as citizens.

Q. Well, he wanted to go there to get prospective material for the Stueben Society? A. Yes, sir.

Q. You assume he wanted to illegally get an alien?

A. If I remember correctly, he said, "We may take some of those in," and that is what I kicked about.

Q. Did he say he wanted to take aliens?

A. He said, "We could make citizens out of them," yes, sir.

Q. Well, that is rather a double-barreled—he said, "We could make good citizens out of the Germans there?"

A. Yes, sir.

Q. Now, in that connection and at that moment and in that sentence, did he say that "we will take in aliens"?

A. Well, he came to that conclusion, yes.

Q. What did he say about that?

A. He said, "We will go and get some of them and increase the membership of the society."

Q. Who did he mean by that?

A. We were talking about—if I remember, the 13 Club, or a club of 13, nearly all of them were aliens, even had [fol. 92] some Scotchmen in there, I understand.

Mr. Rhodes: Scotchmen, good Lord, in your German House? That is all."

J. I. Barton, being produced, sworn and examined as a witness on behalf of the Government, testified that he is a resident of Kansas City, living here for eight (Tr. 153) years, is manager of Maryland Casualty Company branch office and is acquainted with Appellant Baumgartner, becoming acquainted with him first in the latter part of June, 1935 or early part of 1936 when he joined witness' church, Country Club Congregational Church.

Witness testified further as follows:

"Q. Now, I will ask you if you had any conversation with Mr. Baumgartner relative to Adolf Hitler or the German government? If so, when was that conversation?

A. Well, I had a conversation with Mr. Baumgartner at one of our men's dinners. Mr. Baumgartner is an attractive man and gives evidence of education and culture, so it was natural that I asked him about things in Germany. He was warm in his admiration of Mr. Hitler.

Q. What did he say about it, as you remember, in substance?

A. Well, as I would recall it, he thought that Mr. Hitler's motives and actions were proper.

Mr. Rhodes: What did he say, Mr. Barton? Don't give his thoughts. We want to get what he said.

By Mr. Milligan:

Q. In substance, [whad] did he say?

A. Well, he said that Mr. Hitler was a great man and that what he was doing was good for Germany. (Tr. 154)

Q. And did he say whether he was in sympathy with that? A. Yes, quite so.

[fol. 93] Q. Or with that, thought?

A. Quite so.

Q. What did he say in that relation, in that respect, I mean?

A. Well, he gave his approval of Mr. Hitler.

Mr. Rhodes: Now, if Your Honor please, the United States Attorney says, "Did he say he was in sympathy," and then what did he say, then the witness says he gave his approval. We haven't a single fact in that whole conversation. I object to it.

The Court: Sustained.

By Mr. Milligan:

Q. In substance, can you state to the Court what he did say about Adolf Hitler?

A. Yes, he said that Adolf Hitler was a great man and that he was leading Germany in the right direction, and he showed a warm admiration for Mr. Hitler.

Mr. Rhodes: Well, I move to strike that out.

The Court: The latter part of the answer is stricken as a conclusion of the witness.

By Mr. Milligan:

Q. Did you you have any other conversation with him?

A. No, that didn't fit into my way of thinking so I had no further discussions with him. (Tr. 155)

Clarence Sloan, being produced, sworn and examined as a witness on behalf of the Government, testified as follows: That he lived at 4751 Kiowa in Johnson County, Kansas in the vicinity of Kansas City, Missouri, where he has lived since March, 1941; that he is an employee of the Kansas City Power & Light Company in its testing laboratories and has been for more than fourteen years; that he has lived in the vicinity of Kansas City, Missouri all of that time; (Tr. 156) that originally he was employed as a member of the overhead department and in Sep- [fol. 94] tember, 1933 was transferred to the meter department and in 1938 was transferred to the testing laboratory; that in the latter work his desk was closer to Mr. Baumgartner than to any other or about fifty feet away; that he had known Mr. Baumgartner before January, 1938 but had become well acquainted with him at that

time and since; that he had numerous conversations with the Appellant Baumgartner; that in 1938 or 1939 he had often had a conversation with Appellant Baumgartner about Germany and Hitler and the German situation and German government. (Tr. 157)

Witness further states:

A. "Well, as near as I can recall, it could have been either in the latter part of '38 or the early part of '39, I had him make the statement to me in the course of a conversation, I don't recall just how it came about, but he said that Hitler would be recorded in history as the greatest man of his time, and that he would be remembered long after Roosevelt was forgotten. Now, I asked him for what reason he thought that Hitler would be recorded as such a great man and he says, "Well, knowing the conditions that Germany was in when I left there and how that Germany has been brought to the front and the things that have been done for Germany," he says, "it just follows naturally that he must be the greatest man of this time."

By Mr. Phelps:

Q. Did he make any statements, say anything for or against the government—the form of the German Government, the present form of the German Government as compared with the government of democracies?

A. He has commented numerous times on the efficiency of operation of the German government as compared to democracies, (Tr. 159) and has told me on occasions that [fol. 95] he thought that the democracy of the United States was a practical farce, that to all practical effects the ordinary citizen of the United States had no voice in his government.

Q. Can you recall any other statements he made along that line?

A. Well, I recall statements that he has made, at least one particularly derogatory to the President of the United States.

The Court: What was it he said, that is what he wants to know, not your conclusion about it.

A. Well, the exact wording, Your Honor—

The Court: (Interrupting) The substance of it.

A. (continuing) Was that he called the President of the United States an unseemly name.

The Court: What is the name? This is a Court, we say anything here.

A. Well, he says, "that son-of-a-bitch is just leading us into war."

By Mr. Phelps:

Q. Did he state any reasons why he made that statement?

A. I didn't bother to inquire.

Q. I mean, did he make any statement with reference to why the President was leading us into War?

A. Well, that was at the time when the Lease-Lend Bill was being considered in Congress and was advocated, and the occasion of it was probably brought about by the statement that I had (Tr. 159) made that I was heartily in favor of the Lend-Lease Act and Mr. Baumgartner told me that he considered that as just one step further to the entrance of the United States in the war, and that he was very much opposed to it.

Q. Did he tell you in substance at that time if he thought the president was being motivated by some im-
[fol. 96] proper purpose or by some improper influence?

A. Well, he has told me on occasions that he thought that the President of the United States was controlled by the British; on other occasions that he was controlled by the Jews and I don't recall his exact wording, but he has told me that he thought that possibly the name "Roosevelt" could come from Rosenfelt."

Q. Well you tell the Court if you recall any statements made by the defendant comparing the form of government of the German State in its operations with the democratic form of government prevailing in the United States, England and other countries? (Tr. 160)

A. Well, the substance of the statements that he has made to me in that regard have been comments on the comparative high efficiency of the operation of the totalitarian governments in comparison to the slow and cumbersome operations of the democracies and has stated the democracies just don't get things done.

Q. Did you observe whether or not the defendant was a frequent listener at the radio in his office?

A. Yes, he had a radio right down close to his desk and I very frequently observed him listening to that radio.

Q. Do you know whether he used the short wave attachment in connection with the radio?

A. This particular radio did not have short wave attachment but I have been by his desk there when he listened to rebroadcasts, speeches or, at least, one that I recall a speech of Hitler where Mr. Nicholson and I were there for at least a portion of the time that this speech was being broadcast over there and Mr. Baumgarther gave us a running translation of that speech. His manner was [fol. 97] enthusiastic and I can't recall the exact wording but certain statements that Hitler had made, I believe in answer to a statement or speech, I believe a speech of Churchill, that he used words of approval. Now, as to the exact wording of that—but he expressed his approval in statements such as, "he gave them a good answer there."

Q. Do you recall any other occasions that he listened to a (Tr. 161) rebroadcast of Hitler's speech besides this particular one you mentioned?

A. Well, I believe that if there was at all times—if it was during the working day and there was a rebroadcast speech of Hitler that could be heard on the ordinary broadcast band of the radio, well, Mr. Baumgartner was sure to listen to it as I cannot recall an occasion when he didn't.

Q. You spoke of his manner as being enthusiastic when he listened to these broadcasts. Do you recall any incident that occurred there about the time of the fall of Dunkirk?

A. Well, to the best of my recollection, it was at the fall, I believe, of Dunkirk Mr. Baumgartner came into the office that morning with a very jubilant air about him and made the statement, "Today I am rejoicing."

Q. Didn't the Kansas City Power & Light Company build the line that supplied the power to the Lake City Ordnance Plant? A. Yes, they did.

Q. The Remington Arms Company works there under the control of the government. Did the defendant have anything to do with that work, so far as you know?

A. Well, a great deal of that work was assigned to me but on one occasion our assistant foreman assigned the

[fol. 98] test of some of the copper wire, either shield wire or conductor, to Mr. Baumgartner with the comment that, "They want this wire for the Lake City job and we would like to have the test right away." Within I would say, (Tr. 162) possibly 30 minutes after that when he was working on the wire, I had occasion to be back where he was working and he commented to me in this way; he says, "This is God damned foolishness to spend all this money building plants like this when there is so much unemployment in the Country and so many better things that they could use all that money for."

Q. That was in the early days of the construction of the Lake City Ordnance plant, wasn't it, about the time that that plant was being built and the power lines built out to it?

A. It was at the time—I don't recall whether it was the first shipment of wire or one of the subsequent shipments, but it was a test which they wanted rather in a hurry because the government had asked the Light Company to build those lines in a hurry and the first connection was made in there in a great rush and the other just as soon as they could possibly make it.

Q. Can you recall what year that statement was made? Do you know the date of the building of the Lake City Ordnance Plant?

A. I don't recall the exact date, no.

Mr. Phelps: That is all; you may cross-examine.

Cross-Examination.

By Mr. Rhodes:

Q. You remember the year, don't you?

A. Well, I am trying to place that. I believe that was in the spring of 1940, to the best of my recollection.

[fol. 99] Q. What is your racial extraction?

A. Well, it would be (Tr. 163) very hard to determine; I would say American.

Q. I know, but what is your racial extraction?

A. Well, if you want to go as far as my grandparents—

Q. Go as far as need be to get the fact. What is your racial extraction?

A. On my father's side of the family, it is largely Scotch-Irish. The noted Dr. Robert T. Sloan of Kansas City was a cousin of my grandfather's; he has been dead

a great many years. My grandmother on the other side was Irish and some of the Sloan family were in this Country at the time of the Revolutionary War.

Q. Well, that would seem to be far enough back. Thank you very much. Did you hear anybody else listening to radios or know of anyone else listening to radios?

A. Yes, all of us in the laboratory have listened to the radio on occasion.

Q. Did you know that anybody ever listened to a speech of Hitler's either direct or rebroadcast?

A. Well, as I said, I listened to a portion of it with Mr. Baumgartner.

Q. I understand that, but was there anybody else out side of your business building and outside of your circle of acquaintances whom you imagined listened to any such broadcasts?

A. Well, that I couldn't say. I imagine they did because they were of such popular interest in the country.

Q. Certainly. I should imagine so, too. Are you related to Robert Tarlteton Sloan?

A. Very distantly. I take it you mean the lawyer here in Kansas City? (Tr. 164)

Q. Yes, the humorist here in Kansas City, admitted to the bar; are you related to him?

A. As I understand, he was a son of the Dr. Robert Sloan.

[fol. 100] Q. That is right.

A. That Dr. Robert Sloan, as I say, was a cousin of my grandfather."

ALEX SHARP, being produced, sworn and examined as a witness on behalf of the Government, testified that he lives in Kansas City; has for twenty years; now works at Sunflower Ordnance Plant at Eudora, Kansas, attended high school in Kansas City, Missouri; was member of Sunday School class which Appellant Baumgartner, taught, (Tr. 165) remained such about eight or nine months from September, 1937 to June 1938; says that Baumgartner referred to Germany very frequently in the Sunday School Class and that the Sundays which he failed to mention Germany in some way were few and far between; that he

talked about Germany practically every Sunday and witness further said "I don't recall definitely of anything he said about Mr. Hitler. He spoke mainly of his experiences in Germany." (Tr. 166)

Witness further stated:

"A. Well, every Sunday we got on the subject of the Germany army in the first World War and the way the people in Germany lived and the conditions in Germany being very fine and it was largely along that line, and his experiences in the first World War in the German army and to me, at the time, they were interesting but yet they were definitely—he spoke definitely from the Germany point of view.

Q. Do you mean pro-German? A. Pro-German.

Q. Did he make any comparison between their government over there and our government, the democracy or the conditions in this country?

A. I don't remember a comparison but he did speak of [fol. 101] the fine conditions in Germany and also of the fact that the German armies and the German government in the First World War did the right thing; he justified their actions (Tr. 167) in the first World War with stories and experiences of those days but that is all I recall along that line.

Q. The last you attended Sunday School class was what time in 1938?

A. Probably around in June of 1938.

Q. Were questions asked him by these students and answers made? A. Yes.

Q. On this subject I am talking about? A. Yes.

Mr. Milligan: I believe you may take the witness.

Mr. Rhodes: You knew he had been an officer in the German Army, didn't you?

A. Yes, sir.

JOHN G. AKERSTROM, being produced, sworn and examined as a witness on behalf of the Government, testified that he lives at 4345 Wyoming in Kansas City, Missouri and has lived there since September, 1916; that his business is

that of maintainer for the Kansas City Railway Company; (Tr. 168) that he became acquainted with Baumgartner in May or June of 1936 when he was connected with the Kansas City School of Engineering and Baumgartner was taken in as instructor and was also a member of the Board which connection continued until the fall of 1937. Witness was an instructor in Diesel engineering, also a member of the Board; that he hasn't seen Baumgartner for about five years.

Witness further said:

"Q. Did you have a conversation with him relative to [fol. 102] Germany and relative to Adolf Hitler?

A. Well, it was at the noon hour and I just read the headlines of the paper and, of course, everything was pretty well discussed about Hitler and Germany at the time.

Q. When was that conversation?

A. That was in the fall of 1937.

Q. All right, what in substance did Mr. Baumgartner say about Germany and Hitler?

A. Well, he said that Hitler was the best leader that Germany ever had.

Q. What else, if anything?

A. Well, I asked him then why, if he thought so much of Hitler and the German movement, why he didn't go back and he said he couldn't because he was also a German officer in the first World War and that if he should go back to Germany someone would recognize him and turn him in to the government.

Q. That was in 1937? [—] As near as I can recollect.

Q. Have you had any conversations with him since then? A. No, I haven't seen him since.

Q. You say, as I understand that you said to him, "Since you think so much of Germany and Hitler, why don't you go back," was that it? A. Yes.

Mr. Milligan: I believe you may take the witness.

Cross-Examination.

By Mr. Rhodes:

Q. What is your nationality, Mr. Akerstrom?

A. I was born in Sweden.

Q. Born in Sweden? A. Yes.
Q. Are you naturalized here? A. Yes, sir.
Q. When were you naturalized?
A. September 21, 1927.
Q. 1927? A. Yes.
Q. When did you come here?
A. In—September 27, 1905. (Tr. 170)
[fol. 103] Q. What happened to the Kansas City School of Engineering? A. We closed up in the fall of 1937.
Q. You say "we" did? A. Yes.
Q. You were interested in it?
A. Well, I was one of the board members.
Q. You were one of the board members? Did you own part of it? A. No.
Q. Who owned the school?
A. There was no ownership; it was a non-profit school.
Q. Who financed it?
A. Well, the school financed its lf, with the exception of some assistance from William Volker.

Mr. Volker gave some assistance financially?

A. Twice."

JACK O'HARA, being produced, sworn and examined as a witness on behalf of the Government, testified that he is Private Jack O'Hara in the U. S. Army at the present (Tr. 171) time, stationed in Camp Roberts, California. He resided in Kansas City, Missouri all his life except for one year spent in Chicago; that he is a member of the Country Club Congregational Church where he attended and was a member of the Sunday-School class which Baumgartner taught.

"Q. Mr. O'Hara, I would like for you to tell the Court whether or not it was the practice of the defendant, Carl Baumgartner, in conducting the instructions in this class, of which you were a member, to follow the regular outline of courses of study or the work to be done or to discuss other matters?

A. I don't know what his outline was but we—each Sunday there was a round-table discussion on current events

or international affairs that usually came back to Germany in some way or other.

[fol. 104] Q. When the subject, as you say, came back to Germany, who conducted most of that discussion?

A. Mr. Baumgartner.

Q. Will you please tell the Court what he said about Germany?

A. I can recall no specific statements, but I can say that (Tr. 172) he was—

Q. (interrupting) The substance of them.

A. He thought Germany had a good government, that they were justified in doing everything that they were doing at that time.

Mr. Rhodes: Now, wait just a minute; can you say what he said? You are stating your conclusions of what he meant, now?

A. I am sorry; I can't recall any statements. I can't quote him.

Mr. Rhodes: Then I object to it, if your Honor, please.

By Mr. Phelps:

Q. You don't have to recall the exact words but if you can, tell the substance.

A. Well, the substance of his feelings were that Germany had a good government; that all of their aggressive actions at that time were good.

Mr. Rhodes: What time was this?

A. 1938.

By Mr. Phelps:

Q. I believe you said that these discussions occurred almost every Sunday? A. That is right.

Q. The subject always came back to that?

A. Most always.

Q. I will ask you to tell the Court whether or not the substance of the statements made by the defendant to this class of young men, which you have just quoted, occurred regularly or was there only one separate instance of it?

A. It was regular. (Tr. 173)

Mr. Phelps: That is all. You may cross-examine.

[fol. 105] Cross-Examination.

By Mr. Rhodes:

Q. Other subjects were discussed?

A. That is right.

Mr. Rhodes: That is all.

JOHN H. YONTS, being produced, sworn and examined as a witness on behalf of the Government, testified that he lives at 3445 Paseo; has been resident of Kansas City for five years; formerly lived in Nevada, Missouri; (Tr. 174) in the mortgage loan business here, associated with Allied Building Credits; formerly employed by Farm and Home Building and Loan Company; is a member of the South Kansas City Business Men's Club; that Mr. Baumgartner was a guest speaker at a meeting of the club in April, 1939.

Witness further said:

Q. Do you recall whether or not Mr. Baumgartner, in the course of the speech which he made to your club on that day, make any reference to the present government of the German State and to Adolf Hitler? A. He did.

Q. Will you please tell the Court, sir, the substance of those remarks as you recall them?

A. Mr. Baumgartner was quite profuse in his compliments and praise to—

Mr. Rhodes (interrupting) Would you mind saying what was said, not compliments.

A. I don't recall the words that were said.

The Court: The substance, not the words necessarily, but (Tr. 175) the substance of it.

A. In substance, Mr. Baumgartner was giving praise to the present government and its ruler, showing what they had accomplished in the way of coming from poverty up to the richest and strongest nation in existence. They had [fol. 106] built up a fine government out of very little capital to work with.

Q. Do you recall whether or not any reference was made during the course of his speech to acts of aggression

against other nations permitted by the German state, Mr. Yonts? A. I do.

Q. Will you tell the Court the substance of those remarks?

A. Mr. Baumgartner said that they were justified in being aggressors to neighboring nations because those nations were taken away from the fatherland and should be rightfully returned; that there was an unequal distribution of land and countries after the World War I was over.

Mr. Phelps: You may cross-examine.

Cross-Examination.

By Mr. Rhodes:

Q. Did he preface his remarks by saying that he meant no criticism of any kind to America or anybody else?

A. Not that I recall.

Q. Mr. Hovey, also present at that time, said he did. Would that be wrong? A. I don't know.

Q. Another gentleman, Mr. Hill of Hickman Mills, also present (Tr. 176) at the luncheon, said the subject of Mr. Baumgartner was Germany after the World War, is that correct? A. I don't know.

Q. Do you know that men's and women's colleges have for sometime taught the same thing you said Mr. Baumgartner said about unequal distribution of raw materials [fol. 107] in respect to Germany and other countries? Do you know that? A. I don't.

Mr. Rhodes: That is all."

Elwood Hobbs, being produced, sworn and examined as a witness on behalf of the Government, testified that he lives at 6119 El Monte on the Kansas side, that he is a newspaper reporter in the Kansas City Star, and has been since 1925; that he heard a speech of Appellant Baumgartner, in last few years (Tr. 178) either late October or early November of 1938, and further said:

"Q. Did you hear a conversation or have a conversation with Mr. Baumgartner in the presence of others following this speech?

A. Yes: I heard part of the conversation.

Q. After the speech was over?

A. That is right.

Q. I will ask you to state whether or not he said anything relative to Adolf Hitler? A. Yes, he did.

Q. And Germany or the New Order?

A. Yes, he did.

Q. What, in substance, do you remember that statement was?

A. Well, in answer to various questions, he said that Germany had made progress under its new form of government, that Hitler was a great man and a fine leader or a good leader, I don't remember the exact words, and I believe the question was asked of him whether he would like to live under that form of government; as nearly as I can recall, he said he would enjoy living over there and then, as I recall, the specific question was asked if he contemplated [returned] to Germany and as I recall, the answer to that he said no, that he was an American citizen, had a good job there.

Mr. Milligan: You may take the witness.

[fol. 108] Cross-Examination.

By Mr. Rhodes:

Q. That was in November of 1938, as you recall? (Tr. 178)

A. Late October or November, 1938. I don't remember the exact date.

Q. Where was that?

A. It was before the Shawnee Mission Cooperative Club.

Mr. Rhodes: That is all."

C. C. Fairchild, being produced, sworn and examined as a witness on behalf of the Government, testified that he lives at 6707 Linden Road, Kansas City, Missouri; that he is a teacher at Manual High School, Kansas City, Missouri, and has a night class in public speaking for Kansas City Advertising Club; that he is a member of Country Club Congregational Church; (Tr. 179) that he knows the Appellant Baumgartner, and that Baumgartner taught boys' class at Country Club Congregational Church, and

witness taught the Class one Sunday at which time witness says: "the young people in the class objected to certain pro-German remarks which they said were made by Mr. Baumgartner, so I talked with him after class one day and he [express] his opinion on the situation in Germany at that time."

Witness further said:

"Well, he made the statement that he favored Hitler. I was rather surprised at that but he made a statement that he favored Hitler and that he thought Hitler was doing the right thing, that it would give Germany a place in the sun. He also made the statement. that he favored the Austrian Putsch and the treatment of the Jews in Germany, that it was necessary, that under the Versailles Treaty Germany had not received a square deal. He didn't [fol. 109] say anything about the American government at all.

Q. Did you have a conversation with him after that?

A. I had a conversation in the summer before Pearl Harber. That would be 1941, wouldn't it?

Q. Yes, that would be 1941?

A. That was at the A and (Tr. 180) P Store at 63rd. Do you want what he said?

Q. Yes, tell the Court what he said in that conversation if it has any reference to Germany or the German government.

A. We didn't talk about the German Government at that time. I talked about his family. His family was in Germany and I said, "With the situation as serious as it is, Mr. Baumgartner, aren't you going to bring your family back?" He said, "No. I am going to leave my wife and family there during the war." I was suggesting to him that he ought to get his family because the channels would be closed right away but he said he was going to leave them there during the war. He also stated that they were received—I asked him what kind of treatment they were receiving; he said they were receiving good tratment and they were not being bombed and they were happy and well satisfied in Germany.

Mr. Phelps: You may cross-examine.

Cross-Examination.

By Mr. Rhodes:

Q. When did this conversation take place?

A. The last one?

Q. When did this conversation take place that you first testified about?

A. That was in '38, the fall of 1938, late fall of '38.

Q. You covered a lot of territory there in that one conversation that you testified about, didn't you?

A. Yes. The reason he covered a lot of territory was [fol. 110] that I had taught (Tr. 181) his class and was rather surprised at certain remarks made by the students in the class.

Q. You were surprised?

A. I certainly was, knowing Mr. Baumgartner since 1934, '35." (Tr. 182)

Lee Bell, being produced, sworn and examined as a witness on behalf of the Government, testified that he lives in Merriam, Kansas and has for fourteen years; that he heard Baumgartner at a meeting of the Cooperative Culb of Merriam, at Overland Park, Kansas, where Baumgartner was invited to speak. Witness thinks this meeting took place about November 15, 1938 and witness was present in the group immediately assembled at the speech at which questions were asked of Mr. Baumgartner (Tr. 183)

At that time witness says:

"A. Well, Mr. Baumgartner said that he was an ardent admirer of Adolph Hitler; that he was very much in sympathy with his policies and that he was glad that he had the opportunity to come out there and explain to our club his views. In the questioning that followed he said that he would be glad to live under the regime of Hitler."

J. W. Menzie, being produced, sworn and examined as a witness on behalf of the Government testified that he lives in Kansas City and has since August, 1941 and is a special agent for the F. B. I; (Tr. 184) that since June 26, 1939 he has been assigned by special agent in charge of Kansas City Field Office of F. B. I. to Baumgartner case;

that he interviewed Appellant, Baumgartner, in May, 1942 in the office of the F. B. I at Kansas City, Missouri, where another special agent, Paul H. Lewis was present. Lewis is presently assigned to the Philadelphia region of F. B. I. (Tr. 185)

[fol. 111] Witness testified as follows:

"Q. What was said about that?

A. He told me that he was born in Kiel, Germany in 1895; that he was educated in the University located at Darmstadt, Germany; that in 1914 he served in the German Army and in about 1917, during the World War, was commissioned a second lieutenant. Shortly thereafter he was taken prisoner by the English and kept in an internment camp in England. After the War he returned to Germany and pursued his studies. He is an electrical engineer, I believe, and he studied further in engineering in Germany and then came to the United States in 1927. He was married in Germany, I believe in 1926 or '27, and his wife followed him to the United States within a few months. Do you want me to continue?

Q. Let me ask you this question and then you can continue with your statement. Was anything said that you recall between you and the defendant as to the spelling of his first name?

A. Yes, sir, in Germany he spelled his first name, Carl, with a "K". And I inquired of him the reason for the change of spelling and he said that since he had come to America he decided to spell it the American way, the English spelling.

Q. All right, now, you may proceed.

A. He landed at New York City, New York, in 1927, and went to Murphysboro, Illinois, where he stayed for a few months with the Gebhardt family. He then came to Kansas City, Missouri, some time in the (Tr. 186) year 1927 and obtained a job, I believe it was with the American Radiator Company for about three months. And then he was offered a position with the Kansas City Power & Light Company and in 1927 accepted a job as a workman on the line and he has been with that company ever [fol. 112] since.

Q. Did he tell you in the course of that interview where his family was?

A. Yes, sir, he told me that his wife and three children had gone back to Germany in May of 1939.

Q. Did he make any statement to you about his attitude towards the English people? A. Yes, sir.

Q. What did he say about them?

A. He told me that he was not anti-British.

Q. Did he say anything about not speaking of nationalities but of branches of the Caucasian race? Did he say anything to you about his attitude towards minorities in the United States, of the Jewish people in the United States or what his attiude was about those?

A. He remarked to me that he was not anti-Jewish.

Mr. Rhodes: May I inquire here, the written statement was made or a transcript made of the conversation in your office?

Mr. Phelps: Yes, sir.

Mr. Rhodes: Where is that?

Mr. Phelps: It is here in Court.

Mr. Rhodes: I should like to have that produced, if (Tr. 187) Your Honor please, instead of the witness saying what he said. A transcript of those questions and answers was made in your office.

Mr. Phelps: No. We will be very glad to produce the statement.

The Court: Of course, the witness may state what he remembers the witness said, but you have said you would produce the statement and Captain Rhodes should produce it to be used in cross-examination.

[fol. 113] Mr. Rhodes: I will try it.

The Court: You may proceed with his examination.

Mr. Phelps: Were you ever at the home of the defendant?

A. Yes, sir.

The Court: Well, now, he said he was not anti-British and not anti-Jewish?

A. Yes, sir.

By Mr. Phelps:

Q. When were you at the defendant's home?

A. The same afternoon that I interviewed him in the office, I went out to his home at the Lucerne Hotel.

Q. Was anyone else with you.

A. Yes, sir, Special Agent Paul H. Lewis. (Tr. 188)

Q. I will ask you to tell the Court, Mr. Menzie, whether or not you made a search of the premises upon his investigation? A. I did.

Mr. Phelps: I will ask the reporter, for the purpose of identification to mark these documents.

(Which said documents, handed to the reporter, were marked for identification as "Plaintiff's Exhibits Nos. 7 and 8, EFM,")

By Mr. Phelps:

Q. Mr. Menzie, I hand you these two booklets which have been marked by the reporter as Plaintiff's Exhibits 7 and 8, and will ask you to tell the Court if you have seen those documents before? A. Yes, sir, I have.

Q. When did you first see them? A. I saw these in the desk in Mr. Baumgartner's room, in his hotel room at the Lucerne Hotel.

Q. What did you do with them after you got them?

A. I picked them up and saw that the writing was in the German language and I turned to Mr. Baumgartner [fol. 114] and I said, "What are these books, Mr. Baumgartner?" and he said, "That is a diary that I have been keeping." I said, "Is this your writing here in these books in the German language," and he said, "Yes, that is my writing."

Q. Did you take these books then to the offices of the Kansas City Field Division of the Bureau of Investigation in the United States Courthouse at Kansas City, Missouri?

A. Yes, sir. (Tr. 189)

Q. What did you do with them?

A. I forwarded them to the technical laboratory of the Federal Bureau of Investigation in Washington, D. C. for examination and translation.

Q. Do you know to what man they were sent for translation? A. I think Mr. Hundt translated them.

Q. How do you spell that?

A. I believe it is (spelling) H-u-n-d-t.

Q. Were they then returned to the Field Office, the Kansas City Field office of the Bureau of Investigation?

A. Yes, sir.

Q. At Kansas City? A. Yes, sir.

Q. And have been in your files ever since until you produced them in the courtroom this morning?

A. No, I took them out of the files on one occasion, I believe, last week; and took them down to the library of the United States attorney's office at which time Mr. Baumgartner looked the diary over.

Q. Has there been any change made in either volume of this book, any page deleted or any addition or subtraction?

Mr. Rhodes: If Your Honor, please, we admit that they are exactly as they found them.

[fol. 115] The Court: Very well.

Mr. Rhodes: We don't admit the accuracy of the translation, but they are as they were found.

Mr. Phelps: You may cross-examine. (Tr. 190).

Cross-Examination.

By Mr. Rhodes:

Q. Did a stenographer take down questions and answers when you interviewed Mr. Baumgartner in your office?

A. No, sir.

Q. Who dictated this statement which I hold in my hand?

A. I dictated the statement in the presence of Mr. Baumgartner and Mr. Paul H. Lewis after which Mr. Baumgartner carefully read the statement and made any changes in there that he desired to make, any changes in the statement are initialed by Mr. Baumgartner.

Q. So that he has seen and approved this statement of your interview? A. Yes, sir.

Mr. Rhodes: I want a copy of that.

Mr. Phelps: This is the only copy we have.

Mr. Rhodes: Well, I will make one, I want a copy of it, unless you can have it made.

By Mr. Rhodes:

Q. Who directed you to make an investigation of Mr. Baumgartner?

A. Mr. Dwight Brantley, the Special Agent in charge of the F. B. I. at Kansas City, Missouri.

Q. What instructions were you given by Mr. Brantley?

A. I wasn't given any specific instructions. I was just advised that this was a case involving a citizen of German descent who had been naturalized and that my investigation should proceed along the lines to determine whether or not this (Tr. 191) gentleman did in good faith become [fol. 116] naturalized in 1932.

Q. That investigation, of course, was bottomed upon some complaint that had been made to the F. B. I.?

A. Yes, sir.

Q. Who made that complaint?

A. We have had several complaints in the file, I think, starting back in 1940.

Q. Who made them?

Mr. Phelps: Your Honor, I object to that, for the reason that under the departmental regulations the witness cannot testify to that.

Mr. Rhodes: I don't understand that the Departmental Regulations can overcome the Constitution of the United States.

The Court: Of course not. Overruled. When you put a witness on the stand you put him on under the rules of that govern all witnesses; nobody is a privileged witness.

A. As I recall it, I believe there were several complaints. I can't recall all of them. As I recall it, one of the first complaints was made by Mr. Howery, who is in charge of the laboratory for the Kansas City Power and Light Company.

By Mr. Rhodes:

Q. You have a record of who the complainants were, of course? A. Sir?

Q. In your files there is a record of who the complainants were? A. Yes, sir.

Q. Can you remember any others? If you can't offhand, produce (Tr. 192) them later on.

A. You see, when a complaint comes in, there was a short report—or two of them, I believe, before I was assigned to the case, and they started off on the initial complaint and then they would branch out from that.

[fol. 117] Q. It is the complaint alone that I am speaking of, and if you can't recall all of them you can produce all of them later, but I want to know who the complainants were.

A. I believe it was first brought to our attention by Mr. Howery.

Q. Now, if you now say there were no others I will drop that subject, but if there were others you can't now remember I want you to get that so that you can later testify on it. What records did you examine in the investigation that you conducted, what records, now, I am speaking of?

A. Well, upon the search of the home I examined the diary. I also—

Q. (interrupting) Let me interrupt you a minute. The records were confined to Mr. Baumgartner's home that you examined or did you examine records elsewhere?

A. Well, I talked to several people at the Power and Light Company and looked at his employment record with the Kansas City Power and Light Company.

Q. What did that show, briefly?

A. That showed briefly that he started in with the Kansas City Power and Light Company in 1927 working on a truck. (Tr. 193)

Q. Let me get at it this way: Was there anything against him or for him on this record or merely a record of his daily comings and goings?

A. It merely recorded his changes in assignment of employment at the Kansas City Power and Light.

Q. Was there any other record outside of the record you found in his room which you examined?

A. None except the immigration and naturalization service.

Q. The formal papers in connection with his naturaliza-

[fol. 118] tion. Now, when you went to his house to exam-

ine his room, that was following your conversation in your office here? A. Yes, sir.

Q. Did he readily go with you?

A. Yes, sir, he gave his consent to search his room.

Q. Did you go into his room with him?

A. No, sir, he did not want the people out there to think that he was, of course, not under arrest, and he didn't want people to have the impression that he was under arrest so we consented to let him go up first.

Q. How long after did you follow?

A. I would say about four or five minutes.

Q. Is there any thought in your mind or was there any thought in your mind or do you make a charge of any kind that he disturbed in anywise his premises between the time he went there and four or five minutes later when you followed? (Tr. 194)

A. I wouldn't make any charge, I wouldn't know.

Q. Well, have you the opinion that he did?

Mr. Phelps: Well, now I object to that, Your Honor.

The Court: Overruled. If the witness has such an opinion it might influence his testimony.

A. I didn't find anything to indicate that.

By Mr. Rhodes:

Q. You found Mr. Baumgartner agreeable to your searching anything that he had, did you not?

A. Yes, sir.

Q. Now, when you were in the room was he there with you? A. Yes, sir.

Q. He pointed out, did he not, to you where his records were?

[fol. 119] A. He did not.

Q. He did not. Did he cover up where his records were?

A. He made no attempt to make any cover-up while I was in the room with him.

Q. You found some of his old text books or school note books written also in Germany?

A. I saw several German books, yes, sir.

Q. Among those books you found a book which later you discovered was a diary?

A. No, his diary was kept in his desk. The books were over on the other side of the room as I recall it, and then the desk, I recall, I believe was a bookcase too up above the desk, these two books were in one of the drawers of that combination desk and bookcase. (Tr. 195)

Q. Well, you stated on direct examination that Mr. Baumgartner gave you his diary and it was written in German and told you what it was?

A. He didn't give it to me, I found it.

Q. Well, you found a book—two books?

A. I found the two books and turned to him and asked him what they were.

Q. What did he tell you?

A. He told me that was his diary.

Q. And did he make any effort not to give it to you?

A. No, sir.

Q. Did he translate for you there some of the passages?

A. I asked him to read a few of the passages, yes, sir.

Q. And he did that? A. Yes, sir.

Q. And have you subsequently found the translation he gave you to be correct according to your translator?

A. I didn't check that. I can't read or understand [fol. 120] German.

Q. Well, you have no recollection now that it was incorrect, do you?

A. The part that he read to me wouldn't have made any difference.

Q. I understand that, but I am getting at another point. You have no recollection that he was trying to mislead you in any way? A. No, sir.

Q. You filed an affidavit, I believe, Mr. Menzie, which is attached to the complaint in this case in which there are certain excerpts from that diary. Among others who told you that (Tr. 196) Baumgartner said he was a Bund organizer and getting money from Germany—

A. (interrupting) I think Mr. McKenzie told me that.

Q. Who? A. Mr. McKenzie or Mr. Trosper.

Q. Mr. McKenzie, the gentleman who was on the stand here yesterday?

A. One of the men who works down at the Kansas City Power and Light Company on a truck and then I think Mr. Trosper also.

Q. He told you that Mr. Baumgartner said he was a Bund organizer? A. Yes, sir.

Q. Did Mr. Baumgartner ever tell you that?

A. Mr. Baumgartner ever tell me that, no, sir.

Q. In your affidavit, I think you put it this way, that it is known that he has said and so on. That statement is based upon Trosper and McKenzie's Statement to you that Baumgartner said he was a Bund organizer?

A. Yes, sir.

Q. The same thing is true of this allegation in the affidavit that he is supposed to have said something concerning empty revolver shells? A. Yes, sir.

Q. The silver bullet idea? A. Yes, sir.

[fol. 121] Q. That comes from the same source, does it?

A. Came from Mr. Trosper, I believe.

Q. In 1931 there are some statements there in this affidavit; who told you about those?

A. If you would read the statements I might recall them. (Tr. 197)

Q. I thought you might remember them readily. I think I can find them with a little time. Well, I can cross examine later on that. Do you recollect what the 1927 talk was as shown in your affidavit? I should have made a note of the place, but I didn't. A. Yes, sir, I do.

Q. What was that and who told you?

A. Mr. McKenzie told me that he was in charge of a truck for the Kansas City Power and Light Company and that Baumgartner came to work for him on that truck and that Baumgartner immediately started extolling the virtuse of Germany so much that it infuriated a couple of his men and that one of them came to him and complained and that later on he transferred Baumgartner off of his truck to avoid any trouble.

Q. Well, now, when did Mr. Baumgartner come to this Country? A. In 1927.

Q. In February, I believe it was, wasn't it?

A. I don't recall the exact month.

Q. And this 1927 talk that you speak of is supposed to have taken place during what time, during that year?

A. Well, after he arrived in New York, it is my understanding, that after four or five months after his arrival he in Kansas City became employed by the Kansas City Power and Light Company.

Q. You don't know the time that this talk was supposed to have taken place that Mr. McKenzie told you about, what month and what year?

[fol. 122] A. Just in 1927, approximately five (Tr. 198) or six months after he arrived in the United States.

Q. Do you know if Mr. Baumgartner spoke in English when he came to this country? A. No, I don't.

Q. You speak here about the title, "The Confessions of a Nazi Spy". What about that, that is a motion picture here in which Mr. Baumgartner is stated to have been active in getting it taken off of the screen?

A. Yes, sir.

Q. Have you anything about that particularly except that as a fact? A. That is a fact.

Q. That is all you mean by that? A. Yes, sir.

Q. How many agents in your office have been assigned to this Baumgartner case and give the names, if you know?

A. Well, Mr. Lewis was with me at the time of the search and Mr. Ward.

Q. Ward was his first name?

A. Martin J. Ward; and Mr. Hanrahan.

Q. Do you know his first name?

A. William Hanrahan.

Q. Is that all that have been assigned to it?

A. In Kansas City, that I recall.

Q. You interview everyone, of course, that you feel or that has intimated to you knows anything about any case, don't you?

A. Yes, sir, if we think there is enough to it we will call the man in and interview him.

Q. Have you interviewed any persons in connection with the Baumgartner case that you found knew nothing about it? I don't (Tr. 199) mean you personally, I mean your office.

A. I don't know that I could testify to what the other boys found.

Q. Well, confine it to yourself, then.

[fol. 123] A. I would say all that I interviewed knew something about it.

Q. Have you interviewed any persons who spoke a good word for Mr. Baumgartner?

A. Well, they would state that he was a man of good habits; that he was intelligent, very good in his profession. That is about all I can offer.

Q. You didn't set that out in your affidavit? A. Sir?

Q. You didn't say anything about that in your affidavit?

A. No, sir.

Q. Did Mr. Baumgartner ever tell you an untruth?

A. He stated he was not anti-British and anti-Jewish.

Q. He told you he was not anti-British and anti-Jewish?

A. Yes, sir.

Q. I asked you whether or not he ever told you an untruth?

A. Pardon me. He stated he was not against the Jews and [kw] as not against the English.

Q. Well, again, I am seeking his veracity. Did he ever tell you anything that you subsequently found to be untrue in your investigation?

A. No, because after his interview I didn't investigate him any further.

Q. So far as you know everything he has said has proven to be true?

A. So far as I know everything he (Tr. 200) has said is true with the exception of those statements in there that he was not against the Jewish people and he was not against the British.

Q. And you say those are untrue?

A. Well, I have had numerous people tell me otherwise.

Q. Well, Mr. Menzie, you are, I am sure, a college man?

A. Yes, sir.

[fol. 124] Q. Now, you can't really, can you, say that you are now convinced that Mr. Baumgartner told you an untruth when he said that he was not anti-British or anti-Jewish?

A. I can't of my own knowledge say it was an untruth, no, sir.

Q. Do you attach any significance or importance to the fact that Mr. Baumgartner entered this country, as I believe is the fact, under the name of Karl Baumgartner and was naturalized under the name of Carl Wilhelm Baumgartner?

A. Do I personally attach any significance to it?

Q. Yes. A. No, sir.

Q. That is set out in your affidavit, one could infer that there is an attempt to— A. I believe—

Q. (continuing) —to evade.

A. I believe it is to show (Tr. 201) that the records of the Port of New York would show his entry under the name Karl.

Q. That is the only significance, you are being true to the record, that is all there is to that?

A. Yes, sir.

Mr. Rhodes: Now, Your Honor, I am through at the moment. I want to look up two or three things.

The Court: All right, the witness will be here for further cross-examination."

[fol. 125] GERHARD P. HUNT, being produced, sworn and examined as a witness on behalf of the Government, testified: That he lives in Washington, D. C.; is translator for FBI and was born in Germany, (Tr. 202) in Berlin, which place he lived in 1923; attended high school in Brooklyn, New York and Brooklyn College and New York University, all in New York City; that he speaks German in his home, has studied German in school, began studies of German, majored in German through four years of college and specialized in post-graduate work in German and completed post-graduate work in New York University in 1938. Shortly thereafter, he received appointment with FBI, with which he has been connected since March, 1939, and was first employed as finger print expert; but did translation work for the Bureau at the time he was fingerprint expert. (Tr. 203)

Became officially associated with translation section of Bureau on July 1, 1940, where he has been since; that he has translated almost every kind of material received by the Bureau, personal letters, books, documents, papers, bulletins and in addition gives oral interviews to applicants as translators to the Bureau. His translating work has been confined solely to German (Tr. 204)

Witness states that he first saw Exhibit No. 7 in Washington on June 12, 1942, when it was sent to the Bureau

for translation and received Plaintiff's Exhibit No. 8 at the same time and for the same purpose and that he made [fol. 126] a translation of the two books. (Tr. 205)

Witness states that Plaintiff's Exhibit No. 9 is an accurate and true translation of Plaintiff's Exhibits Nos. 7 and 8, but not a complete translation but represents probably more than half of it, leaving out such things as "got up in the morning, read the paper and took a walk around the block." (Tr. 206)

On cross-examination witness stated that the parts translated are full translations of such parts translated. (Tr. 207)

Witness further stated:

By Mr. Rhodes:

Q. Well, Mr. Hundt, it is true, isn't it, in the German language as well as other languages, that one writing or speaking may use words in a particular meaning that a translator doesn't get or gets another meaning out of them? A. Not, ordinarily. (Tr. 208)

Q. Well, for example, the diary says under date of January 30, 1939—

Mr. Phelps: What page is that, please?

Mr. Rhodes: It is Page 5 of the affidavit attached to the complaint that I am reading from. January 30, 1939. I am quoting: "Today Adolf Hitler made his long awaited Reichstag address. I heard the rebroadcast of this speech on the German short wave broadcast from six to eight p. m. The reception was so wonderful that the entire speech could be clearly understood."

[fol. 127] By Mr. Rhodes:

Q. Now, the word "wonderful," is that the only word that can be used in that translation?

A. Excuse me, while I see the German. (Witness examines the exhibit.)

Mr. Phelps: Page 7 of the diary.

A. May I ask you to repeat the question, please?

By Mr. Rhodes.

Q. The word "wonderful" in that January 30, 1939, wonderful that the entire speech could be entirely understood? A. Yes, sir.

Q. That is the only word that can be used in the translation?

A. No, you can have a synonym. You can say it was exceptional, very good.

Q. Excellent? A. Excellent, yes.

Q. Now, Mr. Baumgartner says he used the word "excellent." That would be correct, would it?

A. Yes. (Tr. 209)

Q. So that it is possible to have a word different in the mind of the man who wrote and in the mind of the man who translates?

A. The word but not the meaning.

Q. I didn't say anything about the meaning, I said about the word? A. Yes, sir.

Q. So that that would be properly translated if it said, "reception was so excellent that the entire speech could be clearly understood"?

A. That would be correct, also.

Q. Now, further along in that same section there: "His speech was very frank and clear, and I was somewhat surprised to see that the newspapers called it one of the most unwarlike which Hitler ever made." You translated [fol. 128] it "unwarlike." Have you—I am reading your translation? A. Yes, I did.

Q. Is there another word that could be used for that?

A. You could say "most peaceful."

Q. Mr. Baumgartner said he meant "peaceful." Would that be correct?

A. Yes, the "most peaceful."

Q. Now, the last sentence: "The Jews and the Catholic Church were both sharply rebuked." Could there be something else for "sharply rebuked"? Mr. Baumgartner says he said "harshly treated." Would that be correct?

A. In this, case, yes, but the sense of the entire sentence when you use that expression, "sharply handled," it usually means that you treat a person as a result of something. In one (Tr. 210) sense it could be merely "sharply"—what was [thw] word?

Q. "Harshly treated."

A. "Harshly treated" or—

Q. "Sharply rebuked," either one.

A. Or "sharply rebuked."

Q. Either one would be correct? A. Yes.

Q. Now, I don't understand that I am attaching any significance to this other than to point out the different words, and I will quickly conclude on that. On February 25, 1939, that is 25 days or 26 days after the one I have been directing your attention to here, there is a paragraph quoted in the translation: "Later in the course of the evening I said to one of the men, whose name I do not re- [fol. 129] member, and who wore the "D" insignia on his lapel—"

Mr. Phelps: (Interrupting) What page is that, please, sir?

Mr. Rhodes: That is page 8 of the translation on the complaint.

Mr. Phelps: What is the date?

Mr. Rhodes: February 25th. Have you found it, Mr. Hundt?

Mr. Phelps: 25th of what year?

Mr. Rhodes: February 25th, the same year of January 30, 1939.

Mr. Phelps: I think there is something wrong there.

A. That is on page 8, I believe.

By Mr. Rhodes:

Q. February 25, 1939, is the entry which (Tr. 211) appears. Have you got it?

A. Yes, I have it.

Q. And "That in my opinion it was the duty of a German-American citizens to stand up on their two feet and fend off all attacks on Germany." Is the translation by you? A. Yes, sir.

Q. Do you have that? A. That is right.

Q. Could it be said differently and still be correct? Would "anti-German attacks" be correct?

A. Just excuse me while I look for this.

Q. I thought you had found it. I am sorry.

A. I have it now. Yes, I have.

Q. "Anti-German attacks" be correct instead of [fol. 130] "attacks on Germany"?

A. Yes, that would have the same meaning.

Q. I think so, but that way of translating it would be equally correct in translation?

A. That is right.

Q. Now, one more, if you please. On March 29, 1939, some 30 days later. Have you got it?

A. That is right.

Q. "Sacks came over in the evening to discuss the card party with me which the Steuben Society intends to hold in order to make some money for publicity for the National Council. Sachs is a good fellow and a good German who has not been Americanized that is, ruined." That is your translation? A. Yes, sir.

Q. Could that be translated otherwise and still be correct?

A. It could be translated and have an even stronger meaning. (Tr. 212)

Q. Could it be translated as "spoiled"?

A. Hardly. It has a much stronger meaning than "spoiled." In fact, "ruined" is a mild meaning for it.

Q. I am not seeking the gradations of meaning, I am merely pointing out it is possible to use one word or another and still be correct. Now, I ask you if his word "spoiled" is a proper translation?

A. It is a very weak synonym for it, yes.

Q. Very weak what?

A. A very weak synonym for the word.

Q. What would be a stronger word since you want to put a stronger one? A. Well—

[fol. 131] The Court: (Interrupting) What is the German word?

A. (Spelling) V-e-r-l-u-d-e-r-t. It means gone to the dogs, run down, ragged, miserably wretched.

By Mr. Rhodes:

Q. But "spoiled" would be correct except in your opinion it would be a much milder gradation of meaning?

A. Yes, sir.

Q. Turn to April 28, 1939. It says here in translation: "Got up at 4:30 to hear Hitler's speech. There are no

words to describe how wonderful it was." Have you got that? A. Yes, sir.

Q. Would it be proper in your opinion to translate it thus: "It would not be proper to grade the speech"?

A. The word "grade" there doesn't give the correct impression. (Tr. 213) I don't think that would be a good translation of it.

Mr. Rhodes: You do not. I think that is all. (Tr. 214)

[fol. 132] RICHARD W. AXTELL being produced, sworn and examined as a witness on behalf of the Government said that he lives in Chicago, Illinois; is employed as a special agent of the Federal Bureau of Investigation, presently assigned to Chicago, Illinois Field Division and previously in the New York City Field Division where he was there about a year from October, 1940, to August, 1941 and it was a part of his duty as special agent to investigate subversive and sabotage cases and inquire into the activities of German agents in this country and stated that during an investigation, he had occasion to interview Fritz Zeglin in connection with an investigation conducted by the Federal Bureau of Investigation in February, 1941. (Tr. 226)

Witness states that Zeglin told him he was employed as a clerk in the German consulate in New York City and had been since November, 1938 and that he came to the United States from Germany in 1927 and remained here since that date except for a period between 1934 and 1937, and that Zeglin told him he was a German citizen.

Witness further states that Zeglin stated that he was an organizer for the German government for an organization known as the Reichdeutsche Vereinigung, more commonly referred to as the R. D. V., which organization was an association of German nationals in the United States and that that organization was in reality a branch of the German labor front in this country; that the German labor front in 1933 became the sole bargaining power of the laborers in Germany representing the workers in Germany. (Tr. 227)

[fol. 133] At that time there were members of the German labor front in the United States and at that time all such members were affiliated with an organization known as the German-American Vocational League and the dues from that organization were paid direct to Berlin, Germany. Between 1936 and 1938 Zeglin was a clerk in the German-American Vocational League in their offices in New York City. In June, 1938, the agreement between the labor front members and the German-American Vocational League in the United States was terminated and Zeglin became an employee of the German consulate to take care of German citizens who were members of the labor front in this country and that he began organizing, on orders from the consulte, the Reichdeutsche Vereinigung and that in that connection he traveled throughout the United States during the first half of 1939, visiting key industrial cities in the country, among others Chicago, Philadelphia, St. Louis, Los Angeles, and other key cities; that he told witness in 1932 he had become a Bund member, a member of the German-American Bund, and shortly thereafter resigned because he didn't agree with their policies. (Tr. 228)

That he also became a member of the Nazi party in this country in 1932; that he resigned from the German-American Bund shortly after becoming a Nazi party member.

Witness further states that mostly members of the German-American Bund were American citizens of German descent and German citizens were discouraged from joining the Bund. (Tr. 229)

Witness further states that Zeglin left this country on the ship carrying the German diplomatic and consular officers on June 16, 1941. Witness also states that the German-American Vocational League is known as the D. A. V. [fol. 134] and another organization, the Deutsche Arbeitsfront, is known as the D. A. F. (Tr. 230)

Witness further states that the R. D. V. is an association of German citizens in the United States. (Tr. 231)

DR. HOWARD TRIVERS, being produced, sworn and examined as a witness on behalf of the Government, testified as follows: That he lives in Kensington, Maryland and is a

divisional assistant in the European Division of the State Department and was educated in Princeton, 1926-1930, Harvard, 1930-1932, Heidelberg, 1932-1933, Harvard again from 1933-1935, Freiburg from the spring of 1935 to 1938, in Switzerland from 1938 to 1939 and back at Harvard from 1940-1941. (Tr. 233)

That he has an A. B. from Princeton, an M. A. and Ph.D. from Harvard. At Princeton his studies were in philosophy, history, literature and related subjects, that in Harvard he specialized for his doctorate in philosophy, especially German philosophy, and that his paper for a Ph.D. was a dissertation concerning Hegel's Philosophy of History. His studies [as] Heidelberg and Freiburg were in German thought in all its phases, German philosophy and history and other aspects of German thought; that in the State Department he is a member of the special unit set up there under the direction of Mr. Raymond E. Murphy, for the purpose of studying all phases of Nazi activities, including Nazi idiology, practices, policies, etc. (Tr. 234)

Witness further stated:

"Q. Dr. Trivers, I want to ask you to tell the Court, based upon the studies you have made and the experiences and observations you have had, what is the relation of the German state, as at present organized under Adolf Hitler [fol. 135] as the leader of the state, to democracies, democratic forms of government?

Mr. Rhodes: Now, if Your Honor please, I at this point propose an objection that if I know and can sense what is coming, I object to it on the ground that it is incompetent irrelevant and inmaterial and has no probative value so far as the issues in this case are concerned. The issue in this case is this man's state of mind in 1932, whether or not he practiced a fraud upon this Court at that time by not fully renouncing all allegiance to the German Reich. That is that. How a dissertation upon present philosophy or the philosophy of the present German government, especially until it is shown that this defendant has any knowledge of it or had any knowledge of it, is wholly incompetent and should not be heard, in my opinion.

The Court: What do you propose to show by this witness, Mr. Phelps?

Mr. Phelps: I propose to show by this witness, your Honor, that the relation of the government organized by the German state under Adolf Hitler as the leader thereof is diametrically opposed to all of the fundamental principles of democratic government.

The Court: You mean in 1942?

Mr. Phelps: Has been ever since the defendant—ever since Hitler came into power on the 30th of January, 1933, to trace it from the beginning.

The Court: Do you still make the same objection?

Mr. Rhodes: Yes, sir, I do. I personally would like to hear it very much but it has nothing to do with this case, as I see it, at least, until it is shown that this defendant knew of what that philosophy of government was and the [fol. 136] activities of that government and activities under certain mechanics or architecture of government in Germany at that time were.

The Court: Undoubtedly, before the witness is permitted to testify, before his testimony would have any probative value in this case, it must be established—I do not say that it has not been established already, I am not saying anything about that—but it must be established at some time that the defendant knew and approved of the philosophy of the German government under the Hitler regime. I have very grave doubts that that matter is a proper subject of expert testimony. Certainly, it is not generally recognized as a field for expert testimony, what kind of government some other nation has. One could only reach a conclusion upon that subject by consideration that the documents which evidence the nature of the foreign government; the documents themselves probably would be the evidence upon which the Court would decide the character of the foreign government. I do not suppose it is a proper field for expert testimony. I think, also, at least tentatively, I think now that this subject has been brought up—I don't say that I think that as a finality, I certainly would want to hear Captain Rhodes upon that

subject—but at least tentatively, I think that judicial notice may be taken of the fact—I have never heard any contention to the contrary—that judicial notice may be taken of any notorious fact or any fact of common knowledge. I think that judicial notice may be taken of the fact that there is no principle of the present German government, the government under Adolf Hitler, which is not diametrically opposed to that principle of our government [fol. 137] which deals with the same subject matter. I do not suppose there is any doubt about that. I would think judicial notice could be taken of that fact. Judicial notice, I would think, could be taken of the fact that every provision of our constitution, every provision of our Bill of Rights, is contrary to the provisions of the German constitution, written and unwritten, under the present regime dealing with the same subject matter.

It would seem to me, therefore, that certainly it would seem to me if counsel for the defendant agrees that the Court may take judicial notice—he may not—but this (Tr. 237) testimony would be largely surplusage and of doubtful competency; but if you do not take too much time, I will permit you to develop the testimony, subject to the objection, and subject to a later motion to strike out.

By Mr. Phelps:

Q. Will you read the question?

The Court: Let me suggest to you, Mr. Phelps, we are not concerned with the German state as it is at present organized; we are concerned with the German state as organized under Hitler's regime up to the time last referred to in the evidence connecting Mr. Baumgartner with this case.

Mr. Phelps: All right.

By Mr. Phelps:

Q. I will ask you to tell the Court, then, Dr. Trivers, based upon the studies you have made of these political subjects, your experiences and observations, what the relation is of the German state organized with Adolf Hitler as the leader of the state, beginning with the time when he became the chancellor of Germany on the 30th of January, 1933, down to June, 1941, which is the last entry [fol. 138] in the defendant's diary, with reference to

democracies in Germany to those governments which we call democratic in form.

A. I would say, as his Honor has said, that National Socialist is diametrically opposed to democratic.

Mr. Rhodes: Would you mind, Doctor, speaking a little louder, please, and holding your head up. We are all interested in what you are saying. I would like to hear it. (Tr. 239)

A. I would say, as His Honor has said, that National Socialism is diametrically opposed to democracy and that the opposition which was created after January 30, 1933, was an integral part of the National Socialist movement in its earliest beginning. We have in Mein Kampf, the Bible of Naziism, Hitler's work in the years of '24 to '25, we have there a description of his youth, of experiences at the beginning when he came to Vienna as a boy of nineteen and he describes going into the Austrian Parliament and he says when he first went in, he said there must be something wrong, there must be something wrong with his Austrian Parliament but not parliament in general, and he watched it for a year and finally he came to the conclusion that parliament itself in general—that parliamentary form of government was entirely wrong and he calls parliamentary procedure a monstrosity of filth and folly. In his early passages he criticizes the majority procedure as impossible of expressing the will of the people or bringing out any good and there are many citations which I could introduce directly, if permitted.

The Court: I will not take up that time, Doctor, unless there is some contention to the contrary made. I do not think anybody is going to dispute you.

[fol. 139] By Mr. Phelps:

Q. I would like you to tell the Court, Doctor, what measures were adopted by the German state in February, 1933, shortly after Hitler became the ruler of Germany (Tr. 239) and in the months following that to destroy democratic government in Germany.

A. The first principal measure was the measure, the law of February 28, 1933. That was less than a month after Hitler came in. It was called the "Law for the Protection of People and State," and it suspended until

further notice six to eight articles in the German constitution of 1919, six to eight articles which are analogous articles to our Bill of Rights. For instance, the inviolability of personal liberty and freedom of the press, freedom of assembly, the secrecy of postal, telegraphic and telephonic communications and it also permitted house searches and orders for confiscations, etc. Now, that decree stated that these rights were suspended until further notice but no further notice has been given, so that, in effect, these fundamental democratic rights have been abrogated in the German state since that date. Then, about a month later, the decree came out, I think it was in March 24, 1933, which is called the "Enabling Act"; the full German title is "Law to Remove the Distress of People and State," and this act did away with parliamentary government. This act permitted the cabinet under Hitler's leadership to make legislation of itself, free of the German parliament, and it paved the way and has been the basis for government administrative decree and fiat which has been the legislative procedure in Germany since that time.

Then, in the ensuing months, the other political parties (Tr. 240) were led to dissolve, dissolve of themselves, I believe it was. On July 14, 1933, a law was promulgated [fol. 140] which prohibited the new formation of political parties and declared the National Socialist German Workers' Party to constitute the single political party in Germany. That decree was further deepened and confirmed by a decree in December of that year called the "Decree for the Unitey of Party and State," which established the complete unification of the Nazi party with the German state. The decrees with regard to these decrees, of course, made political opposition impossible and the free expression of divergent political opinions through parties and the democratic procedure based thereupon all impossible.

Furthermore, they so united the Nazi party with the German state that any acts of the party, let us say outside of Germany, for instance, would be tantamount to acts of the State. Now, those represent the most crucial legislative enactments replacing democracy.

Q. You speak of those as "legislative enactments"?

A. Well, "legislative" is perhaps a poorly chosen word. Just "enactments," perhaps, would be better.

Q. Is there any power under the organization of the German government as it has been since the time Hitler became the leader and the possessor of complete power in January, 1933, any power in the German parliament to pass any legislation?

A. No, sir, there is no power, no such power. The German (Tr. 241) parliament is called together at rather rare occasions by Hitler in order to be permitted to approve of certain measures which he has taken.

Q. Does the German parliament actually have the right to approve or reject the measures which he promulgates?

A. It only has the right to approve. As a matter of [fol. 141] fact, at the time when Hitler put through the Enabling Act, which I spoke to you about, at the time when there were other political parties in his address to the Reichstag after proposing the act, he told them openly that now the time had come when they had to accept this because if they didn't he would put through the Enabling Act anyway and act accordingly. The parliament at that time did accept it and since then has accepted with even more facility.

Q. These decrees or enactments that you referred to, by which all of the democratic processes were destroyed in Germany, do you have copies of those decrees with you?

A. I do. I have photostatic copies of the originals as they appeared in the German Bulletin of Laws.

Q. What is the German Bulletin of Laws?

A. That is the official journal in which German laws are promulgated and publication in this journal is taken tantamount to promulgation with provisions often contained putting the laws in effect at a certain time with reference to the date of publication.

Q. Will you get those decrees, please? (Tr. 242)

Mr. Rhodes: Your Honor, I am advised by Mr. Phelps that he expects to offer here laws about which Dr. Trivers has spoken. It is wholly unnecessary to encumber this record with those. So far as I am concerned, we can accept Dr. Trivers' statement of what they are.

The Court: Very well; that will dispose of that.

Mr. Phelps: That is very good, sir.

Q. Dr. Trivers, will you tell the Court, please, sir, the theory, the official theory of the German government, the German state as organized under Adolf Hitler since 1933, with reference to the theory of dual citizenship, the belief and practice of the National Socialist Party of Germany and the German state with regard to dual citizenship? [fol. 142] That is, the citizenship of German people who were born in Germany, living in other countries, what it has been and how it has developed under the organization of the German state under Adolf Hitler?

A. The National Socialist state has extended the use of dual nationality which it inherited from the past. That is, the basic German citizenship law of 1913 introduced a proviso allowing dual nationality if a German, before acquiring foreign citizenship, petitions his home state and receives written consent to such acquisition of foreign citizenship; without receiving such consent, the loss of German citizenship was not involved. That basic law of 1913, aside from certain minor alterations which have not affected this principal of dual (Tr. 243) nationality has remained in force. The National Socialists have merely used this principle of dual nationality on a larger scale. This can be seen most clearly in their practice of organizing German folk groups in the smaller countries, especially in eastern and southeastern Europe, although not restricted to these countries. That is, German folk groups—and I am translating literally a technical expression—German folk groups have been organized in Rumania, Hungary, Slovakia, the new Croatia and Servia and also in Denmark. These folk groups represent organized minorities whose members acknowledge a dual fealty, one to Adolf Hitler and Nazi Germany and another to the local state of which they are members. That is one way in which National Socialists have used dual nationality. It has cropped up, too, in a subsidiary way in the enrollment of volunteers, say, from Belgium and Norway in the German forces. [fol. 143] These volunteers take allegiance to Adolf Hitler as the leader of the Germanic peoples and at the same time an oath of allegiance to their own state. Then the principle of dual nationality has occurred in three enactments, one—and most important—in the military service law of 1935. This law specified that every German man is liable to service in the German armed forces. It then fur-

ther specified that for the purposes of this law, a man is considered a German citizen if he also possesses foreign citizenship as well as his German citizenship (Tr. 244).

Then, in September of 1939 an enactment was made which facilitated the naturalization of volunteers in the German army. It stated that the former principle that the previous nationality had to be renounced before the acquisition of German citizenship was no longer required and most recently, expressing the principle of dual nationality in the strongest terms in a decree of January 10, 1942, dealing with matters of citizenship, an article states that the German minister of the Interior has the powers to designate countries of which Germans may become citizens without the loss of German citizenship therewith being involved.

Q. How does that theory and practice of the present German state affect people who were born in Germany living in the United States?

A. I think for that aspect of it, you have to look back to the deeper consideration behind the whole policy of dual nationality. I mean the presupposition for that policy is the German and the especially Nazi view that blood is superior to citizenship and since racial ties are superior, they can permit their Germans to adopt a foreign citizenship because in view of their belief of the principle of the supremacy of the blood tie, they believe that the primary [fol. 144] allegiance will always be that of blood; that Nazi view, the view of the supremacy of German blood over any foreign citizenship, is the basis for the dual nationality policy which I have been mentioning."

Upon cross-examination the witness stated further:

"Q. Dr. Trivers, does the Reichstag still meet at all?

A. It does meet on occasion.

Q. Has it power to assemble itself or must it meet only on call? A. On call.

Q. Who calls it?

A. It is called by Hitler through Goering as head of the Reichstag.

Q. What power has it in law, not what it does actually? What power is given to it under the law? A. None.

Q. None? It is a compelled audience for Hitler, is that it?

A. Yes.

Q. It has no power to approve or disapprove under the German law?

A. Hitler permits it to approve. I wouldn't call that power to approve or disapprove.

Q. We are getting to a fine point. Suppose it should disapprove. What would happen?

A. Well, I think you are suggesting an impossibility.

Q. Well, it is simply in a room; it is assembled in a room and it is given directions to vote "A", we will say, which Mr. Hitler wants to approve, "A". Suppose the Reichstag should say, "We disapprove "A". What would happen?

A. The Reichstag would be dissolved and Hitler would do what he had already done (Tr. 246).

Q. Then that is a force in the form of Hitler that prevents its doing a negative thing, is it not?

A. You might say that.

Q. Hitler, as leader of the military, the armed forces, [fol. 145] can prevent anything being done?

A. Hitler is always the supreme law giver, according to their theory and according to the structure of their government and as such, the Reichstag has no powers to question that law-giving power.

Q. That is according to the letter of the law as promulgated by Hitler or as established by the Reichstag itself, that is true, is it? In other words, is it prohibited from doing anything in law?

A. In other words, it is not prohibited from expressing its disapproval but in fact, it is.

Q. Well, I understand that and that is what I want to get at. In theory, I will call it, which is a bad word to use because it might mean anything—in theory, then, it may express disapproval but it knows better than to do so, is that it?

A. Well, actually, in the theory as presented by German writers on constitutional law, it only has the right to reaffirm its continued confidence in the Fuehrer; and that is the interpretation which is given to that point by such a man as Rudolph Hoobler who is a professor of law at Leipzig.

Q. It only has the power to say "yes" if Hitler asks it to say "Yes"? It has no further power? A. Yes.

Q. If it should say "No," it would be going contrary to the (Tr. 247) present—whatever the present fundamental law of Germany is called, probably not a constitution but whatever it may be, it would be stepping beyond its power under that law, is that correct?

A. Would you mind repeating that?

Q. Well, you are getting me a little bit involved, but the point is, there is a law in Germany or there is a series of laws in Germany which in some place in words defines the status of the Reichstag. Now, one moment. [fol. 146] Having defined the status of the Reichstag in words in that law or in those laws, I now ask you, in words, not the interpretation of the words, but in words, has it the right to say "No"?

A. I think you are raising a specious question because you are talking about the written constitution of the Reichstag and the whole—the German state at present has no written constitution and that is one way in which German writers praise it. They say it is animated and imbued by the deeper spirit of National Socialism, it doesn't need a written constitution.

Q. Not to press the point too far, you have stated that the law of 1933 for the protection of the people in the state which is promulgated and still in effect because it went into effect until further orders, did one thing, then the Enabling Act of March 24, 1933, did another. It was entitled "Law to Remove Distress of People and the State," did away with parliamentary government and that in itself gave the basis for the government by decree and fiat, and other political parties were (Tr. 248) dissolved, and then the law of July, 1933, prohibited the formation of any other political parties and the decree for the unity of party and state later on unified the Nazi party and the German state, and that the acts of the Nazi party, therefore, outside of Germany are tantamount to German state. You have described those things which I call the present laws. Now, under those, does the Reichstag have the right to say "No," even though it would be dissolved if it said "No"? Has it the right to say "No" under the words of those laws? That seems to me a very simple question.

A. But I answered that before, that is an abstract, legalistic way; perhaps, you could say that it has such a right.

[fol. 147] Q. All right, we will put a period there. Then what you are saying is that if it does exercise that right, that Mr. Hitler, because of his power, control of the Nazi power and control of the German armies, can dissolve the Reichstag and its disapproval means nothing in fact? Is that what you are saying?

A. Yes, I would say that.

Q. All right, let's get to this dual citizenship. That originated in the law of 1913, as I understood you?

A. Yes.

Q. That has since been enlarged by the present rulers of Germany? A. Yes.

Q. There is Mr. Baumgartner sitting there on your right. He came to this country in 1927. Was Hitler in charge then in (Tr. 249) Germany?

A. 1927? Hitler's movement was in existence.

Q. Was Hitler in charge, Doctor? A. No.

Q. He was not, was he? A. No.

Q. When did he get in charge?

A. January 30, 1933.

Q. That is right. Now, Mr. Baumgartner came [her] in 1927 and he applied for citizenship and was naturalized a citizen in 1932. Can you tell me now, in words of one syllable, is Mr. Baumgartner at present a citizen of Germany and, if so, under what law is he a citizen of Germany?

A. I don't know anything about the status of Mr. Baumgartner as a citizen of Germany.

Q. Do any of these laws that you speak of concerning dual citizenship make him a citizen of Germany?

A. They would make him able, I can say that, if he is not a German citizen—which I do not know—they would make him able to resume his German citizenship without any difficulty if his previous record from the Nazi standpoint was satisfactory.

[fol. 148] Q. But it requires an affirmative act on his part, doesn't it to gain that citizenship?

A. I should say that it did.

Q. All that you are saying about the dual citizenship is that the German government itself seeks by its laws

to retain control over its citizens and its persons who were citizens but later became citizens of other countries, so long as it can physically take hold of them? That is all you are saying, isn't it? (Tr. 250).

A. Would you mind repeating that point?

Q. All you are saying is that the German government as a state organization is seeking to keep hold of its—I will call them "nationals", that is, peoples in its own country who are its own citizens in its own country now, keep hold of them wherever they may go and whatever effort they make to become citizens of other countries; that is, from their standpoint, and gives those nationals an opportunity in an easy way, should those nationals desire it, to remain citizens of the German Reich if they want to do it? That is all you are saying, isn't it?

A. You are putting that in a very harmless way.

Q. No, it isn't harmless.

A. I don't know whether it is correct to do that, for this reason, you have to realize that the policy which was started in 1913 was in direct contravention of the previous German nationality policy and the Bancroft Treaty of Naturalization of 1867, which had ruled the previous relationship between this country and Germany with regard to nationalized Germans in this country. Now, the Bancroft Treaty—you will recall the Bancroft Treaties which specified—

Q. (Interrupting) What were they, first?

A. Which specified—

[fol. 149] Q. (Interrupting) Doctor, what was the Bancroft Treaty?

A. George Bancroft, the historian, who was the ambassador for Berlin—(Tr. 251).

Q. Let's get it in the record. I know who he is but I want it in here.

A. Which specified that both countries recognized the naturalization which took place in each other as cancelling the original citizenship.

Q. Very well. Now, in 1913, the German nation changed its policy and what did that do to the Bancroft Treaty?

A. It introduced a principle in contradiction to the Bancroft Treaty.

Q. What happened to that treaty?

A. That treaty was cancelled in 1918.

Q. It was abrogated, then, wasn't it, and was no longer in force? A. Yes.

Q. So, the German law of 1913 stands along without support from the United States and its amplifications; since that time, has it been supported by the United States? A. No.

Q. As I thought we understood a while ago, we have the Germans expecting only, so far as their citizenship is concerned—we do not now recognize their interpretation of any dual citizenship, do we? Do we or do we not?

A. We do not.

Q. Mr. Baumgartner here took an oath of allegiance to the United States. Let us assume—which is the issue here—but assume for that part that he took it in good faith. Is he still a citizen of Germany?

A. I don't know anything about Mr. Baumgartner's situation.

Q. I mean, under these laws that you do know about (Tr. 252).

A. Those things are not determined merely by the law; they are determined by the specific case and the specific acts, etc.

[fol. 150] Q. Let me put it another way, Doctor, please?

Mr. Milligan: You interrupted him, Mr. Rhodes. I think he ought to be able to answer that.

A. I mean, I know of cases where naturalization has been acquired by Germans and a year later the party, according to Section 13 of the law of 1913, which permitted them to do that, although maintaining his residence in this country, obtained from the German consul situated in this country German citizenship and then several years later traveled with both an American and German passport, although to obtain American passport he had to pledge that he had not accepted or taken allegiance to another state. Now, I don't know the case about which you are questioning me.

Q. Well, I will tell you. Perhaps through inadvertence of mine I have gotten you on another track. There is a man named Baumgartner sitting right there (indicating).

He came here in 1927. He took an oath of citizenship here. He said he renounced all allegiance to any and all governments except the government of the United States, to which he swore fealty. Now, let us assume that he did renounce all fealty to all other governments. Let us assume he was doing that in good faith. We won't argue that point at this moment. Could he, seeking to do so in the utmost of good faith, divest himself of citizenship (Tr. 253) in any other state and gain citizenship in the United States? Mind you, he is acting in good faith under my assumption. I know what is done but there must be bad faith in things that are done differently. Would he then still be a German citizen, whether he wanted to be or not, it wouldn't make any difference? Would he still be a German citizen?

[fol. 151] A. Not under that exactly.

Q. Well, exactly. So that the dual citizenship of Germany has an effect in this country if Germany can, by force of arms or otherwise, give the effect, and only under those circumstances?

A. Not only under those circumstances; the act of the individual can also give the principle.

Q. We have gotten over that, Doctor. We have gotten over the act of the individual. We are still on the good faith level now. Oh, I think the answer is plain.

By Mr. Phelps:

Q. Let me ask you this, Doctor: Then according to what you said, this man Baumgartner, referred to by counsel, could go back to Germany and become a German citizen or would be recognized as a German citizen if his record in this country met with the approval of the agent of the German government who had the investigation of his record in this country under his special assignment?

A. Most certainly.

Mr. Rhodes: Would he have to apply for citizenship in any way in Germany, I mean?

A. He might. He would undoubtedly have to fill out an application blank; whether that would be solicited or not, I don't know.

Mr. Phelps: That is all. (Tr. 254-255)

Mr. Rhodes: That is all. I think that is all, if Your Honor please.

Doctor Robert M. W. Kempner, being produced, sworn and examined as a witness on behalf of the Government testified as follows: That he lives at 1018 Duncan Avenue, Yeadon, Pennsylvania; that he was born in Freiburg, Germany and was last in Germany in 1936 and was in the first World War in Germany, serving in the fighting forces on the western front and has attended the universities of Berlin, Freiburg, Breslau and the University of Pennsylvania; that he has the highest possible degrees in Germany in law and political science; that he served as assistant to the States Attorney in Berlin, as Judge in Berlin and as legal adviser to the centralized Prussian police administration which was a 76,000 man administrative body; that he terminated his services after Hitler came into power in 1933; that he has taught in Germany in the Academy of Politics and the Police Academy of Berlin which is something like the F. B. I. in Washington, also in the School of Social Work, and is now teaching in Pennsylvania State College, U. S. Military Academy, and lectures and teaches some at Columbia University; that he was a bill drafter of the police administrative court in Germany and wrote books on the German police system, [fol. 152] police and civil liberties, wrote several articles in American law journals, Journal of International Law, University of Pennsylvania Law Review (Tr. 256) about German citizenship questions and several other things.

Witness further testified:

"Q. In your service for the German state, were you called upon to investigate any of the actions of Adolf Hitler and did you have any personal contact and conversations with Adolf Hitler?

Mr. Rhodes: If your Honor please, I renew the objection made before for the same reasons unless it is shown, of course—

The Court: Received in the same way as the testimony of the previous witness was received, subject to the same objection and to a possible motion to strike out.

By Mr. Milligan:

Q. Go right on.

A. That is, I mean our staff, including myself, we had to investigate the National Socialist party before it came into power and we had to investigate Hitler, Mr. Goering and some of the people around him, and so I came several times in personal contact with Hitler, Goering; Mr. Goering was, in fact, formally my last boss in Germany when the old regime was over, and so I had close contact, official contact. I never was a Nazi but was in close official contact with these organizations and persons as investigator and legal advisor.

Q. How many times did you have personal conversations with Adolf Hitler?

A. We had personal conversations with this man at least five, six, seven times, and I had special assignments to this field.

Q. What were you investigating Hitler for, what crimes? (Tr. 257)

[fol. 153] A. We investigated Hitler for high treason, for perjury, then we had some questions of homosexuality, riots, disturbances, sedition and several things.

Q. What years were those that this investigation was carried on?

A. That was started in—that was before my time—that was started in 1924 when the Police Administration recommended not to parole him in an official report. Later in the following years, especially in 1929, 1930 and 1931, when the police administration recommended to deport him as an undesirable alien and to dissolve the Nazi party and its groups so far as it was possible in Germany and abroad.

Q. Now, Doctor, have you served as an expert in Federal courts of the German government?

A. I served as an expert witness in Federal Court, Washington, D. C., on two trials, in Hartford during this summer and then in some grand jury investigation in Philadelphia on some other occasions, too.

Q. Have you made any special studies outside of your own first-hand information of the Nazi system both abroad

and here as it presents itself in the United States with all its organizations, [A.—] and I worked on this under the direction of the Carnegie Institute in New York.

Q. I wish you to state to the Court what the main differences are between the operation of the Nazi system and the democratic form of government, just in your own way and as briefly as (Tr. 258) possible.

Mr. Rhodes: I shouldn't think it would be necessary to take up that again. We have been over it once with one expert.

The Court: Do not take too much time.

Mr. Milligan: No, sir, I will ask him to do it very briefly.

Mr. Rhodes: We all know what it is.

[fol. 154] The Court: I think we all know what it is but you may state what the main differences are in your opinion.

A. I don't like to point out the differences in the legal situation or in the problem of the personal liberty or your courts.

The Court: I would imagine it might be quicker if you would point out the similarities.

A. There are not many similarities that I can find.

Mr. Rhodes: Each is in a state, the one word the judge is asking.

A. No, I object if I am permitted to do this.

Mr. Rhodes: I am sorry.

Mr. Milligan: Go right ahead.

The Court: Go ahead and answer the question.

A. No, not each is a state. The United States are states but Germany is not. Germany is a worldwide system with its local (Tr. 259) posts abroad. For instance, the Nazi organization is a board in Germany. According to German citizenship law on which I worked for many years, according to German citizenship law—may I say this in addition to the expert from the State Department—

according to German citizenship law, somebody who confesses to be a follower of Adolf Hitler even if he is a citizen of another country, is regarded by Mr. Hitler in the Nazi party as a German, a situation without any kind of application or something else. In the German citizenship philosophy in practice, it says everybody who likes to be a good citizen and is a Nazi is regarded by us as citizens, and if a good Nazi, like Mr. Kuntzer, an American-born citizen, who did some service as a traitor to this country when he went down to Mexico City and said, "Give me my German passport," then the German consul said, "O. K. Since you are a follower in our line, since [fol. 155] you are a Nazi follower, as a German citizen you will get your passport," or whatever it is, without any formal things. The Nazis are not so strict about these formal things because they are followers.

The Court: No formal things; they are very informal.

A. Very informal, yes.

By Mr. Milligan:

Q. Doctor, in other words, they believe in the dual nationality, is that it?

A. I wouldn't call that "dual nationality." I would call it, if somebody confesses to be a Nazi, his nationality, his superior nationality is what (Tr. 260) they call German nationality, and then he might have some small allegiance which doesn't mean anything to the Nazis, too. That is the real status in not hundreds, in thousands and thousands of cases and that administrative result is that the Nazis, in their register of Germans abroad, count such persons as Germans abroad whether they are citizens of any other country or not.

Q. In other words, they count a man who has been naturalized over here still a citizen of Germany, is that what you mean?

A. If he is in Nazi line and so professes and is not anti-Nazi.

Q. So then the criterion is whether he is faithful to the Nazis and believes in the Nazi principles?

A. That is the only criterion and this criterion is printed in a lot of official German stuff, and the set-up of

the German registration system for Germans abroad is in that line.

Q. I will ask you this, relative to the answer you have given? Suppose that a German citizen who had been naturalized over here and had lived here, say ten years, would go back to Germany. What would he have to do to get into and be a citizen of Germany under the Nazi [fol. 156] regime?

A. If a former German citizen who might be—if a German citizen or a naturalized American citizen of former German nationality goes back to Germany?

Q. Take the case that Mr. Rhodes pointed out here, Mr. Baumgartner. What if he goes back to Germany; go ahead from that. (Tr. 261)

A. First, before he goes back to Germany, normally—not in war time—he has to report to the German consul here and the German consul has to make the formal request in Germany with the Nazi power, with the Gestapo, whether he is O. K. and whether that person is permitted to enter Germany. Such formal request to the Gestapo in Berlin is not necessary if said respective person is in good standing, member of certain organizations of Nazis abroad. Then it might be not necessary to ask back to the Gestapo in Germany.

Q. Would he have to have any proof when he went to Germany?

A. Now, that is the first part of that administrative procedure. The second party is now that a certain person goes back. If he goes back, he has to register with the German police to which we refer very often as the "Gestapo". Now, the German police says, "You are O. K.'ed by the German consul, of course, and they have checked it with Berlin, but do you have any proof of your own that you really acted and that you really were always in favor? What kind of document do you have with you? Have you any witnesses with you; normally nobody travels with his witnesses to Germany, so have you any written documents, diaries, notes with you which would prove that you always were in Nazi line?"

Q. In other words, Mr. Baumgartner's diary would be proof, if he went back to Germany under those conditions?

[fol. 157] A. It would be very valuable proof for the German authorities (Tr. 262) because he would be able to state that he is not anti-Nazi and that he did no bad things against the German regime here.

Q. Have you made a study of the German societies over here in this country?

A. Yes, sir.

Q. Since you have been here?

A. I had to do this.

Q. What is the D. A. F.?

A. The D. A. F.?

Q. That is abbreviated, the abbreviation.

A. Deutsche Arbeitsfront; in English, German Labor Front. It is a part of the Nazi party in Germany which is a part of the German regime.

Q. This German Labor Front has several local posts in the United States. These local posts in the United States have the name German-American Vocational League or sometimes Reichdeutsche Vereinigung, abbreviation R. D. V., and D. A. B., Deutsch-Americanische Berufsgemeinschaft. What is the R. D. V.?

A. The R. D. V. and D. A. B. are local posts located in the United States of the German government of the labor administration of the German government and its officials are German employees.

Q. In other words, it is an alien or foreign agency?

A. The officials of the D. A. B. and R. D. V. and of several other organizations I don't like to mention here because they might be under investigation, the officials of these organizations are agents of the Nazi government. They regard themselves as such agents. They are acting as agent and there was never a (Tr. 263) doubt that they are agents. Sometimes they are attached to—sometimes they are registered as agents. Sometimes they are not registered as agents, like some cases, like Frederick Auhein. They were not registered so they finally came in jail.

[fol. 158] Q. Now, speaking on the question I asked you a moment ago in which I was referring to the proof that would be necessary, you stated that a diary would be very valuable proof. If a man who had been naturalized should become an agent of the German government, would a diary be good proof upon his return to Germany?

Mr. Rhodes: Proof of what?

Mr. Milligan: Of his activities.

A. If such a diary, of course—I put it another way: Every agent has to have some kind of record so a diary might be a very good record if the diary proves what he worked for the German government, for the Winter Relief Work; the Winter Relief Work is part of the German government, so if somebody worked for the German Winter Relief Work, which is administered by Mr. Rudolf Goebbels, who is Minister of Propaganda, so if somebody worked for the Winter Relief Work in Philadelphia, Kansas City or Washington, then he worked for the German government and if he can present that he collected such and such, that he made something really valuable for them, then it is, of course, of value if he comes back.

Q. Or even if he stays here?

A. If he stays here, it is (Tr. 264) of greatest value for the occasion of an invasion. It was of greatest value to the persons in Czechoslovakia, in Sudetenland, in Austria, in other countries in which invasions took place and these men could come out and tell, "We did the right thing for you."

Q. These organizations that you have referred to, the D. A. F., etc., are they what are known as the foreign organizations?

A. We might say this in the following way: Every German administrative agency has some local, has some administration abroad. The Labor Administration has the D. A. B. Even now here another organization might [fol. 159] have some veterans' group as local posts. The Nazi party has aiso the foreign sections abroad and they are in all places in the United States. Apparently today leaders have such local posts. I say "apparently" because the German short-wave radio advised the German-speaking population of the United States three or four weeks ago if they have any doubts about political events in the United States since the United States press is very bad and they are not properly informed, they should go—these men in the United States—to their local political leader of the German Labor Front and have the German organizations abroad consult with him and even consult with him about the question of what they have to do

with their children if they are leaving school and similar things. I heard this advice given by Berlin myself three or four weeks ago. (Tr. 265)

Q. Let me ask you, did I understand you right when you said that in substance that everyone of German descent who professes himself to be a follower of Hitler and the Nazi party is a wheel in the Nazi machine? Is that what you said?

A. Yes, is a wheel in the Nazi machine and he regards it as kind of an honor to be such a wheel in the Nazi machine and work as such by distributing propaganda or by favoring the Nazi regime in discussions with other people and so on.

On cross-examination the witness further stated:

Q. Does the Nazi machine so regard him as a part of its machine? He regards himself as a part of it, you said. Does the Nazi machine regard him as a part of its machine?

A. The Nazi machine regards everybody who professes to be an agent as a good Nazi, as one belonging to them. [fol. 160] Q. If Abraham Cohen occupied that place, would the Nazis regard him as a part of their machine?

A. If it would be possible to regard Abraham Cohen as one of his men, he would kiss him.

Q. Then it is Mr. Hitler who regards whether or not it is important for a person, is that it?

A. In such difficult questions like Abraham Cohen, Mr. Hitler himself might have to make the decision but the average rank and file, the average political German in Germany could make that decision. (Tr. 266)

Q. Suppose Admiral Numura, a Japanese, occupied the same position, what would be the result?

A. The Japanese are already recognized as yellow Aryans and there I see no trouble why this man should not be regarded one day as German citizen in honor for all these things he did for the Axis.

Q. Suppose Mr. Aguinaldo, a Philippino, occupied such a position?

A. I am not an expert on Philippine things so I don't know.

Q. He is just another member of another race, that is all there is to that.

A. But I am not familiar with the Philippino race.

Q. He is a colored man.

A. He is a colored man.

Q. Perhaps a mixture between Philippino and Spaniard, would he be so regarded by the Nazi machine as a part of that machine?

A. If he would do certain things for the Nazi; suppose he would do valuable things for the Nazis, these racial things apply not to General Milch, Field Marshal of the German Air Corps, right-hand man of Mr. Goering, who is at least half Jewish, who is regarded as Aryan in honor for his deeds for Hitler and Goering.

[fol. 161] Q. I am not seeking to be humorous, I wanted to get the expanse of this German machine in regard to those racial fields. That, as a matter of fact, would be determined by the Nazi machine whether or not a particular person of a particular race would have sufficient importance to them to so regard him? (Tr. 267)

A. If somebody is of an entirely other race, the administrative decision must be made by a higher person; if somebody is of German race, what they call so-called German Aryan race and is a former German citizen, the administrative procedure is much easier. That can be done wholesale in such cases.

Q. These organizations that you have referred to, the D. A. F., etc., are they what are known as the foreign organizations?

A. We might say this in the following way: Every German administrative agency has some local, has some administration abroad. The Labor Administration has the D. A. B. Even now here another organization might have some veterans' group as local posts. The Nazi party has also the foreign sections abroad and they are in all places in the United States. Apparently today leaders have such local posts. I say "apparently" because the German short wave radio advised the German speaking population of the United States three or four weeks ago if they have any doubts about political events in the United States since the United States press is very bad and they are not properly informed, they should go—these men in the United States—to their local political leader of the German Labor Front and have the German organization abroad consult with him and even consult with him about the question of what they have to do with

thei children if they are leaving school and similar things. I heard this advice given by Berlin myself three or four weeks ago.

Q. Let me ask you, did I understand you right when you said that in substance that everyone of German descent who professes himself to be a follower of Hitler and the Nazi party is a wheel in the Nazi machine? Is that what you said?

A. Yes, is a wheel in the Nazi machine and he regards it as kind of an honor to be such a wheel in the Nazi machine and work as such by distributing propaganda or by favoring the Nazi regime in discussions with other people and so on.

Mr. Milligan: I believe that is all. (Tr. 265-266)

JOSEPH A. SECK, called as a witness on behalf of the defendant, having been previously duly sworn, testified as follows: That he had seen Mr. Baumgartner, the appellant, over a period of five years as his neighbor frequently and from his conversations with him, his habits and life, etc., that his character was good. (Tr. 269-270)

NEIL A. BARTLEY, called as a witness on behalf of the defendant, testified as follows: That he knew Mr. Baumgartner in connection with his membership in the Congregational Church and in connection with a series of lectures on the Alexander Hamilton Institute business courses and as guest in his home; that he considered Mr. Baumgartner a man of good habits and a man of good character. (Tr. 270-271)

D. L. PETERSEN, being produced, sworn and examined as a witness on behalf of the defendant, testified as follows: That he lives at 2509 Cleveland Avenue, Kansas City, and is employed by Kansas City Power and Light Company and has been for approximately seventeen years and knows the appellant, Baumgartner, being employed in the same building but in another department and saw him intermittently and conversed with him (Tr. 272) and

that Baumgartner was a man of good moral character [fol. 162] as the witness knew him and that he considers Baumgartner a good citizen as he knew him. (Tr. 272-3)

R. P. Bulkley, being produced, sworn and examined as a witness on behalf of the defendant, testified as follows: That he lives at 227 East 46th Terrace, Kansas City, Missouri, is employed in the testing laboratory of the Kansas City Power and Light Company and has been since 1936 and Baumgartner came to work there in 1931 or 1932, being there all the time the witness has been there and in the same department as the witness.

Witness saw him every day and conversed with him and to some extent had heard his conversations with others and that, so far as the witness' relationship with him is concerned, he considers Baumgartner, appellant, of very good character and so far as he knows a very good citizen (Tr. 273-4).

Dr. Andreas Bard, being produced, sworn and examined as a witness on behalf of the defendant, testified as follows: That he lives at 3743 Harrison, is a Minister of St. Mark's Lutheran Church, became naturalized citizen in 1894, having come from Mecklenburg, Germany; (Tr. 275)

That he knows the defendant, Baumgartner, having met him at the Country Club Congregational Church at a men's banquet some years ago and that he became a member of witness' church about nine months ago; that Baumgartner voluntarily united with his church; that Baumgartner has been in witness' house repeatedly and played chess together (Tr. 276);

That witness has conversed with appellant about philosophy, that they have conversed about all kinds of things political, religious, and other matters having to do with the United States and Germany, and that witness thinks Mr. Baumgartner is a very brilliant man and a fine thinker.

[fol. 163] That witness is convinced that Mr. Baumgartner's moral character is "No. 1" and beyond re

proach and that he considers appellant a good American citizen and that Baumgartner has no desire to go back to Germany and that witness never had any reason to think Baumgartner's reputation for good American citizenship was bad so he supposes it is good and has never heard anything to the contrary; that witness never heard anyone say anything about Mr. Baumgartner's American citizenship until the trial. (Tr. 277-8)

On cross-examination the witness stated that he is a native of Germany, was eighteen years old when he came to the United States and has been back to Germany three or four times, and that the last time was five or six years ago at which time he stayed about a month visiting his mother who was then living; that witness' entire family is living there: three brothers, four sisters, are all citizens of Germany; that he visited them all in 1937 when he was last there (Tr. 279)

The time next previous to his last visit when he went to Germany was in 1932 when he remained about a month; that witness has discussed with Mr. Baumgartner the philosophy of the Nazi party on many occasions.

Witness further stated:

A. "Mr. Milligan, I have been in personal collision with the Hitler government when I was over there, and you can readily understand how I feel about the Hitler government because I don't like it, and they forbade me to preach in my father's church and that was all reported in the Kansas City paper at the time, so I am no friend of Hitler's.

Q. Yet you go back and stay for a month?

A. Yes.

Q. Visiting your people when Hitler was in absolute control of the government—

[fol. 164] Mr. Rhodes: I object to that as argumentative.

Q. (continuing) In the state, isn't that true?

The Court: Overruled.

A. Would you object to me going to see my mother?

Q. I don't object to your going to see anybody.

A. Do you think—

Q. (Interrupting) But that is a fact, isn't it?

A. Yes, it is, and I am not ashamed of it.

Q. Now, the reason you haven't gone back in the last five years is on account of the war, is that right. (Tr. 281)

A. Well, my mother is gone; that is one of the chief reasons.

Q. You still have brothers and sisters?

A. Well, that is not as close a tie as that between a son and a mother. That is different.

Q. But you still have relatives who are under the power and authority of Adolf Hitler and his socialistic government?

A. And they are all opposed to him, every one of them, my entire family is, and has been from the very beginning.

Q. When did you last [year] from your entire family?

A. I will say three years. I haven't heard from them since.

Q. You haven't heard a word for three years?

A. Not a word from any of them.

Q. As a matter of fact, Doctor, there was some complaint about some of your sermons that were preached about the time—

A. I know.

Q. (continuing) In 1937, 1938 and 1939, about your being pro-German, isn't that the truth?

A. Yes, sir.

Q. Now, you said you know. That is true?

Mr. Rhodes: Let the witness answer. You have asked him three questions in ten seconds.

[fol. 165] Mr. Milligan: I asked him a question and he said, "Yes."

Mr. Rhodes: Let him answer.

By Mr. Milligan:

Q. Now, you can make any explanation you desire.

A. Mr. Milligan, during these wars people hear of many things that I never said. The hysteria of the hatred of Germany is so strong that any man who by accident might have been over there is under suspicion and every word that he says is apt to be misinterpreted, and if I had the time I should be very glad to give you one illustra-

tion where somebody said that I had spoken for Hitler. The United States government during the last war asked me to make speeches in behalf of this government to German-speaking communities and I went all around this country and was paid by the government, and that book is published today as "Your Flag and My Flag." I will not allow anyone to question my patriotism. I love this country more than anyone because I came here, not by accident, but by choice.

Q. But nevertheless, there has been criticism of your sermons on those lips?

A. There always will be.

Q. And they came to your ears?

A. Yes.

Q. Now, you and Mr. Baumgartner have been close social friends, haven't you?

A. Yes.

Q. When did you first meet him?

A. Nine months ago.

Q. Nine months ago?

A. Yes, sir.

Q. Did he ever at any time praise Mr. Hitler in your presence or in any conversation?

A. We spoke about Hitler. Now, what do you mean by praising him?

Q. All right. You know what "praise" means?

Mr. Rhodes: I object to that. He can ask him what he said. He knows better than to ask him that question. (Tr. 283)

[fol. 16] Mr. Milligan: I think I have a right to ask him that question.

A. The thing is, Mr. Baumgartner has read more about national socialism than I have, and to tell you the truth, I never read a line of Mein Kampf, and I am not familiar with it. I am only interested in this country but, of course, I concede to any other man to have his own opinion and I listen to him.

Q. Now, you have heard the testimony? You have been here during the trial of this case, haven't you?

A. No, I have not. I just came in an hour ago.

Q. I didn't know that. I thought you had been here. When did you say you first knew Mr. Baumgartner?

A. I met him at the Congregational Church.

Q. What year?

A. I [dar] say that Dr. North would know, who is here, but it was about three years ago, and Mr. Baumgartner belonged to the Men's Bible Class there and I delivered the address at the Men's Banquet and that is the first time I met him.

Q. You have become close personal friends?

A. Yes.

Q. And associate quite often?

A. I do.

Q. In fact, you took a trip recently with him?

A. No, I didn't take a trip with him but I have a little cottage on the Pacific Ocean and he visited me there. That was this summer.

Q. He spent his vacation with you?

A. Well, I think ten days."

Doctor Walter H. North, being produced, sworn and examined on behalf of the defendant, testified as follows: That he lives at 36 West 65th Terrace, and is a minister of the Country Club Congregational Church and appellant, Mr. Baumgartner, was once a member of his church during 1936, 1937 and 1938, and witness knew him [fol. 167] and he was one of the deacons and taught a class of high school boys; that he was not asked to resign as a teacher and that witness did have some complaints from the fathers of the boys whom Baumgartner, appellant, taught. When Baumgartner resigned, he wrote Witness a letter and witness saw him almost every Sunday but had only casual social conversations with him outside of the church, at church dinners, etc.

Witness states that so far as he knows Baumgartner, appellant, is of good reputation and a naturalized citizen, and that he never heard anything against the moral character of Baumgartner and that the witness always had occasion to think that Baumgartner was a good man, otherwise he would not have had him on his Board of Deacons. Witness identified Defendant's Exhibit No. A, copy of letter of April 13, 1939, addressed to witness by appellant,

Baumgartner, and also Defendant's Exhibit No. B, which is an answer of the witness to letter of Appellant, Exhibit No. A. (Tr. 288-9)

Gustav Schwadler, being produced, sworn and examined as a witness on behalf of the defendant, testified as follows: That he lives at 3334 Euclid, was born in Germany in 1870, is 72 years of age, came to the United States when he was eighteen, was naturalized in 1893 or 1894, runs a business of electric motor and repair service under the name of Spark Electric Company in which he is one of the partners, his brother being the other; that he has known Baumgartner, the appellant, since 1937, is a member of the Steuben Society and Baumgartner also a member; that witness was chairman of the Society when he met Baumgartner; that appellant, Baumgartner, is now secretary and has been, the witness thinks, since 1939; that witness is familiar with the principles of the Steuben Society. Witness identified Defendant's Exhibits [fol. 168] Nos. C, D, E, and F (Tr. 301) which state the principles of the Steuben Society (Tr. 304) and witness further states that Baumgartner has been a guest in his home many times and that he has openly discussed with appellant political questions and other people have been present on occasion, native-born as well as naturalized citizens, men and women, young and old, and that such discussions always took place as a matter of course. Witness doesn't remember meeting Baumgartner in other societies but witness states he is old and doesn't go out much. Witness thinks he knows about the reputation of Baumgartner for American citizenship and says that Baumgartner is a good moral, honest, man and he thinks Baumgartner is a good citizen and "would be a good citizen because he belongs to the Steuben Society," and that his reputation is such as to be known as a good citizen and as witness has observed him, he is a man of good character. (Tr. 305)

Witness states he knows witness who appeared for the Government known as Count Praschma and said, "he is a son of Count Praschme, and he arrived here through the German vice-consul at the time, Mr. Wilder. He was the vice-consul at the time, and he came to America and

landed and was sent to Kansas City, rather, and that is the way Mr. Wilder brought this man Praschma to my house. That is how I know about Praschma.

Q. He testified yesterday for the Government. He said he had met this defendant Baumgartner at your house, I believe his words were, three or four times. May be he said several times, or maybe he said more.

A. No, Praschma didn't come when Baumgartner came. When I got acquainted with him. Praschma was married. He hardly ever came to my house, and the only [fol. 169] time that I know that he met Baumgartner was at Christmas or on New Year's celebration for a very short time."

Witness states that Count Praschma saw Baumgartner in witness' home only once at a Christmas or New Year's celebration; that witness had advised Count Praschma once; that he was worried about Praschma; that witness met Count Praschma about the day he came to Kansas city. (Tr. 307-8)

J. W. Menzie, resumed the stand as witness on behalf of the Government and testified further that the other complainants were D. C. Holley and Mr. Seck. (Tr. 331)

[fol. 170] Carl Wilhelm Baumgartner, being produced, sworn and examined as a witness on behalf of the Defendant, testified as follows:

Direct Examination

By Mr. Rhodes:

Q. You are the defendant, Carl Wilhelm Baumgartner?

A. Yes.

Q. Now, speak up so the Court and we can hear. When were you born, Mr. Baumgartner?

A. The 20th of January, 1895.

Q. Whereabouts?

A. At Kiel, Germany.

Q. Who are your parents?

A. Do you mean the occupation of my father?

Q. No, who were they, what were their names?

A. My father was Frederick Baumgartner and my mother was Christina, and her maiden name was Schaeffer.

Q. Schaeffer. What was your father's business?

A. My father was connected with the State Police in Germany, the State Department.

Q. Where was your wife born?

A. My wife was born at Gotha, in the north of Germany.

Q. Well, just very briefly, who were your more remote ancestors, your grandfather and grandmother?

A. On my father's side?

Q. Both.

A. On my father's side my ancestry was through a long line, generations of millers, flour millers in the southern Black Forest. On my father's side they were farmers.

Q. Would you call them in Germany in their day and in [fol. 171] your day, your father and mother and your grandfather and grandmother people of means?

A. Well, yes, they occupied a rather respectable place in their society, in their community. They were not a people of means, they were simply relatively well to do.

Q. But they were people who occupied a respected place in their communities?

A. Yes.

Q. What is your formal education?

A. Attended grade school until the age of nine and went to high school until the age of 19.

Q. What high school did you go to?

A. I went—I have to explain here that Germany at that time had two different kinds of high schools, one was called the classical high school in which Greek, Latin and French were taught, besides other subjects, and the other kind was more for modern needs, English and French were the leading foreign languages, and mathematics and physics and chemistry were more stressed. I went to the former, to the classical high school.

Q. And graduated there what year?

A. Well, in 1919 I left high school. It was when the war broke out.

Q. Mr. Baumgartner, let me interrupt you. When did you graduate from high school?

A. In 1914.

Q. 1914?

A. Yes.

Q. How old were you then?

A. Nineteen years.

Q. What did you then do in 1914?

A. I enlisted in the German Army when war broke out. War broke out during vacation time and at the place [fol. 172] where I lived war was a very tangible reality. The battle front was only about 40 miles distant and I, with many young boys, enlisted in the Army at that time.

Q. How many children have you?

A. Three.

Q. What are their names?

A. The oldest one is named Edith, she is about thirteen years old, and the other two are twins, a boy and girl, about eight years, and their names are Carl Victor, the boy, and Dorothy Joan is the girl.

Q. Were they born in this country?

A. They were born in Kansas City.

Q. When were you married?

A. The 20th of January, 1927.

Q. When did you leave Germany to come here?

A. I think the boat left, I am not quite sure whether it was sometime in January or the first few days in February, I think it was February.

Q. You arrived here on February 9th, I believe the evidence shows, 1927?

A. Yes, I suppose I left Hamburg about the 28th of January.

Q. When did your wife join you?

A. My wife joined me in September the same year.

Q. Now can you tell me what the condition of Germany was up to the outbreak of the war in 1914 so far as the routine daily lives of you and your family and others in your position?

A. Well, up to 1914 was probably the happiest section [fol. 173] of my life, as we might today under the circumstances call it the Golden Age. Everything was—everybody was happy. The economic conditions were good; prosperity was to be found everywhere and my home life

was especially happy. Of course, I didn't have any brothers and sisters, but I liked my parents, they were fine people. I had my friends and they were fine people and I like to think back of that Germany because I probably will never see those days again.

Mr. Milligan: I want to object to this line of testimony; that it is immaterial, it doesn't throw any light on any issue in this case.

Mr. Rhodes: It will throw some light.

Mr. Milligan: I was addressing my remarks to the Court.

The Court: The objection is overruled.

By Mr. Rhodes:

Q. What was your religion then?

A. Roman Catholic was the religion of my parents, and the religion of everyone in the neighborhood where I lived.

Q. What is it now?

A. I belong now to the St. Mark's Lutheran Church, that means it is a Protestant Lutheran religion.

Q. Have you been a member of any other church since you came to Kansas City?

A. I have been a member of the Congregational Church for about four or five years.

Q. Did you ever attend the Catholic—any Catholic Church here?

A. No, never did.

[fol. 174] Q. Now, you were in the War, you enlisted in 1914? A. Yes.

Q. Immediately upon the outbreak of the war?

A. I took an active part in the War on the western front mostly, from 1914 to '17.

Q. What time in 1914? A. Oh, what time, September.

Q. September, 1914?

A. To be exact, about it, I tried to enlist in August but would not be accepted until September.

Q. You fought then as an enlisted man on the western front for how long, as an enlisted man?

A. Oh, until I became a corporal, at Christmas, 1915, and I then went through the ranks, sergeant, and so on,

and received a commission in 1917. I think it must have been in March. Not very long after this—

Q. (Interrupting) What commission did you receive?

A. Received a commission as second lieutenant, Field Artillery.

Q. All right, go ahead.

A. Not long after this my regiment was transferred to the sector of the western front near the City of Arras, it was in April, 1917. At this time, the English offensive was started in that sector which lasted until September and I was in that battle from the very first minute on as a liaison officer. We were an infantry regiment. At that occasion I was taken prisoner by the English after everything, and laid there in the artillery barrage for seven days, and this is an interesting point because it has something to do with America. I was taken prisoner on the 9th of April, not knowing anything what had been going on in the world out-[fol. 175] side of the battlefield, and when I was taken as a prisoner to the City of Arras and taken down to an English ambulance station, the British medical—

Mr. Milligan: I object to this line of testimony for the reason it is immaterial, it is not responsive and doesn't prove or disprove any issue in this case.

The Court: Overruled.

By Mr. Rhodes:

Q. Proceed.

A. I was taken to this English ambulance station and the English medical man asked us if there was one among us who could speak English, whether we had heard the latest in world events and we didn't know what he meant. He told us America had declared war on Germany and then we had discussion about that.

Q. Well, we won't go into that. A. Yes.

Q. What happened to you then after you were taken prisoner? A. I was taken to England.

Q. How long did you remain there?

A. I was in England two and a half years, until November of 1919, one year [arter] the War.

Q. You remained a prisoner of war until November, 1919? A. Yes.

Q. You returned then to your birth place?

A. I returned to Germany to the place where my parents lived.

Q. Were your parents living then?

A. Yes, both of them.

Q. Then did you continue your education?

A. Then I continued my education.

[fol. 176] Q. Where did you go to school?

A. I went to college at Darmstadt.

Q. Is that the University of Darmstadt? A. Yes.

Q. How long were you in school there?

A. Until the summer of 1925.

Q. Did you graduate from the University?

A. I graduated from the school.

Q. What degree did you receive?

A. Well, it was the degree that is equivalent to Master of Science or Master of Arts.

Q. Would it be equivalent to your electrical engineering degree? A. Yes, sir.

Q. Not a Bachelor of Electric Engineer? A. No.

Q. Then what did you do?

A. Then I found employment at a public utility somewhat like the Kansas City Power and Light Company.

Q. Whereabouts? A. At Freiburg.

Q. How long did you continue there?

A. Until I came to the United States.

Q. In February of 1927? A. Yes.

Q. That would be from 1925, I presume in the late spring or early summer, until February '27, would that be it? A. Yes.

Q. Being married just before you left there? A. Yes.

Q. When did you file your first papers for naturalization?

[fol. 177] A. After having been in this country for the minimum time of five years—19—well, my first papers, I beg your pardon—I must have filed them almost immediately after I came here because my citizenship was granted in 1932, five years afterwards.

Q. Is there any reason that you can assign why you were admitted to this country as Karl Baumgartner and that you were admitted to citizenship as Carl Wilhelm Baumgartner?

A. I did not know anything of this difference. I thought that all my papers were made out as my birth certificate

was made as Carl Wilhelm Baumgartner. There must have been some mistake somewhere in filling out those additional papers.

Q. The complaint filed against you in this case has this paragraph in it: "That on the 16th day of May, 1932, the said Carl Wilhelm Baumgartner filed his petition for naturalization, No. 6197, in the United States District Court for the Western Division of the Western District of Missouri, in which said petition for naturalization the said Carl Wilhelm Baumgartner represented and set forth under oath as required by law, among other things as follows: I am attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. It is my intention to become a citizen of the United States and to renounce absolutely and forever abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to The German Reich, of whom (which) at this time I am a [fol. 178] subject (or citizen), and it is my intention to reside permanently in the United States." Are those statements true? A. They are entirely true.

Q. Were they true at the time?

A. They were true at the time.

Q. Have they been true ever minute since that time?

A. Every minute since that time.

Q. They are true now? A. They are true now.

Q. The complaint further says in paragraph 4: "That thereafter on to-wit, the 26th day of September, 1942, the said Carl Wilhelm Baumgartner took the following oath of allegiance in open court as required by law:

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to The German Reich of whom (which) I have heretofore been a subject (or citizen); that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; reservation or purpose of evasion: So help me God. In acknowledgment whereof I have hereunto affixed my signature." Did you take that oath knowing what it was? A. I did.

Q. Are the statements therein contained true now?

A. It is true now.

[A.] Have they been true at all times since that time?

[fol. 179] A. It has been all the time since that time.

Q. You would be willing to take the oath again, would you? A. I would.

Q. Have you lived up to that oath?

A. I did, in my best opinion, in my best faith, I did.

Q. To your best ability you have lived up to it?

A. To my best ability I have lived up to it.

Q. You have always intended to live up to it?

A. I have always intended to live up to it.

Q. Have you ever sought to violate it in any way?

A. No.

Q. Had you any mental reservation when you took that oath? A. Absolutely none.

Q. Are you a citizen of Germany now? A. No.

Q. Have you ever considered yourself a citizen of Germany since you took that oath? A. No.

Q. Did you have any desire to become a citizen of Germany? A. No.

Q. Have you ever indicated any such thing? A. No.

Q. You got your certificate of naturalization?

A. Beg pardon?

Q. Have you your certificate of naturalization?

A. Yes.

Q. Why did you come to America?

A. Why did I come to America?

[fol. 180] Q. Yes, why did you come here?

A. There are several reasons that I came to America. The economic conditions in Germany at that time in 1927 were very bad. Germany had just gone through the time of inflation and the whole economic life was upset. The outlook was very dark, wages and salaries were small, so naturally one would look for another place where to continue to live and make a living. The reason I came to America then of all the places that were available or could be thought of, was in one place because I had friends in America. There were two sisters of a very good friend of mine residents in America at that time and I corresponded with them. The second reason was that America always had appealed to me since childhood. I have read Cooper, I have read all of the Indian stories; later on I read Longfellow, Evangeline; America appealed to me. It was some-

thing romantic to go to—all these things pressed me to take up—to make an application for immigration and come over here.

Q. You very shortly after arriving here made application for your first papers?

A. My application was kept, I think, in the possession of the American authorities for about three months and I think, as far as I know, I had to wait the least time of anybody I knew at that time who made application.

Q. In the complaint filed against you in paragraph 6 this statement is made, referring to your application for naturalization and oath: "That all of the representations aforesaid made by the said Carl Wilhelm Baumgartner in his petition for naturalization were false and fraudulent in [fol. 181] that he was not in fact attached to the principles of the Constitution of the United States at the time of the filing thereof nor during the five years prior thereto; in that he did not in good faith intend to renounce absolutely and forever all allegiance and fidelity to The German Reich of which he was then a subject but in fact intended to retain allegiance and fidelity to the said German Reich; and in that he did not in fact intend to reside permanently in the United States." Are those statements that I have read to you true or false? A. That I obtained—

Q. (Interrupting) That you obtained your citizenship fraudulently, that you did not intend to remain—

A. (Interrupting) When I read this for the first time it appeared to me to be an absurd suggestion to ever assume anything of that sort.

Q. You assume that those allegations are not true?

A. I took the oath, I knew exactly what I was doing, and I have a very, very high opinion of an oath. In fact, perhaps higher than many people.

Q. Why?

A. I consider the oath as an eternal thing. An oath of citizenship, for instance, I consider not from the commercial standpoint, but from the rational standpoint only. There must be something in the intercourse of human acts on which we can rely and I consider the oath that very thing; that means if a man takes an oath there should be nothing in the world that would make him swerve from the [fol. 182] oath; no happenings of the world of any sort.

Q. Did you speak English when you came to this country?

A. I could read English, I could read Dickens, but I could not speak English nor could I understand English because I never practised. I had been in England, but I didn't have occasion to practice the spoken language.

Q. During the time you were there as prisoner had you opportunity to learn the English?

A. I had the opportunity to learn languages and I took up English first and then took up Italian. I knew French from school, though I engaged largely in lan, uages at that time.

Q. You learned only to read English, is that it?

A. Yes, just reading it.

Q. You couldn't speak it or understand it?

A. Although I never practised speaking—

Q. (Interrupting) Well, paragraph 7 of this complaint says: "That all of the representations aforesaid made by the said Carl Wilhelm Baumgartner in his oath of allegiance were likewise false and fraudulent in that he did not in fact renounce and abjure all allegiance and fidelity to the said German Reich; in that he did not in fact intend to support the Constitution and laws of the United States of America against all enemies, foreign and domestic; and in that he did not in fact intend to bear true faith and allegiance to the same, but in fact did intend to remain a subject of The German Reich and to maintain his allegiance [fol. 183] thereto." Are those allegations true or false?

A. They are false for the same reasons I already gave.

Q. Paragraph 8 says: "That the said certificate of naturalization was procured by the said Carl Wilhelm Baumgartner fraudulently and illegally and for the purpose of obtaining the rights, privileges and protection of American citizenship without intending to assume the duties thereof, and that said certificate of naturalization is subject to cancellation." Are those statements true or false? A. They are false.

Q. What society of any kind do you belong to now?

A. I belong to the Steuben Society and I belong to the Turner Gymnastic Society of Kansas City, and besides to a professional society of the American Institute of Electrical Engineers.

Q. You belong to the American Institute of Electrical Engineers? A. Yes, sir.

Q. To the Turner Society and to the Steuben Society?

A. Yes, sir.

Q. Do you belong to the counterpart of the Electrical Engineers in Germany? A. I did.

Q. Do you now? A. No.

Q. When did you resign?

A. I believe I discontinued my membership in 1936. The reason at that time, in '36 or '37, I am not quite sure about that, the reason at the time was that the dues became so high that I did not think that I would continue for that reason.

Q. Well, now, after you left Germany in 1927, did you maintain any membership in any society there except the [fol. 184] counterpart there of what we know as the American Institute of Electrical Engineering?

A. Because that was the only society I belonged to in Germany at any time.

Q. At any time? A. At any time.

Q. You never belonged to any other society prior to or after leaving there? A. No.

Q. Then you don't belong to any now?

A. I don't belong to any now.

Q. You went to college there? A. Yes.

Q. University. Did you belong to any society there?

A. No, I did not.

Q. I am assuming there were societies there. But you belonged to none? A. I belonged to none.

Q. What German literature or propaganda came to you or you sought out in any way since you have come to America, whether it came from Germany or sent to you from here?

A. Well, now, literature, I would mention an illustrated newspaper, a pictorial newspaper called the Berliner Illustriete Zetung. That paper came from Berlin, from the Austin Publishing Company, and contained more or less pictorial reviews of the world.

Q. Did you subscribe to that?

A. I did subscribe to that.

Q. How long did you take it?

A. I think until about 1933, or '34.

[fol. 185] Q. From the time you came here until that time?

A. No, no. I think we subscribed to this newspaper in about 1930 or '29, and for about three or four years.

Q. Then you discontinued it?

A. I discontinued it for the same reason that I discontinued my membership in the electrical society, because the price was too high on the paper.

Q. What other literature?

A. Then as time went on I—several times, not very many times, I would say not more than four or five times received calendars, pictorial calendars from Germany, and I don't remember whether I received any booklets. I think I did receive booklets from the German Library of Information and from the same institution I received a publication called "Facts in Review."

Q. That was from the United States that you received that?

A. That was from the United States, I think it came from.

Q. New York. A. New York.

Q. When did you start receiving those?

A. Beg pardon?

Q. When did you start receiving those?

A. Let's see, when I received that. I think from the very beginning on, it must have been in 1939, I believe.

Q. Well, from the beginning of what?

A. The beginning of that publication.

Q. I am talking about the Library of Information, if that is the name of it, which we now know was a German propaganda bureau. Did it start in '39?

[fol. 186] A. I believe it did.

Q. And you started receiving its literature from the time it started? A. In 1939.

Q. How long did that continue?

A. Until the German Consulate, I believe in New York was discontinued. That must have been in 1941—no, 1940.

Q. And you recevied from— A. (Interrupting) 1941.

Q. You received from that the periodical facts and review; what other information?

A. The same place sent out some publications about German art and German forests and also certain compendiums or publications of a political character. For instance, there was one concerning Poland and I don't remember them all.

Q. Did you solicit the sending to you of that literature?

A. Whether I asked for them?

Q. Yes. A. No, I did not.

Q. How did they get your name?

A. Well, I suppose the Vice Consulate of Kansas City, so I was told.

Q. Others received the literature in Kansas City?

A. Others received the same literature, yes.

Q. Do you [subscribed], did you subscribe while you were a member of the Electrical Engineering Society in Germany to its publication? A. Well, that was included.

Q. In your dues? A. In membership, yes.

Q. When you got out of that, that discontinued?

A. Yes.

[fol. 187] Q. Now, that and the illustrated Zetung you received. Anything else, did you receive? A. No.

Q. You don't subscribe to any German periodicals or papers at this time? A. No, in this country?

Q. At this time? A. At this time, no.

Q. And have not since—

A. (Interrupting) But I beg your pardon, I am subscribing to a German language newspaper coming from Omaha.

Q. What is the name?

A. Omaha Tribune, I think is the name.

Q. Do you get that regularly? A. I get that regularly.

Q. Is that printed in German?

A. It used to be the Kansas City Presse, it was a weekly and the Presse coming from the same publishing company was discontinued, and the publisher without any further pay sent to the former subscribers the Omaha Tribune.

Q. Is that printed in German or English?

A. Printed in the German language.

Q. That still comes to you? A. Yes.

Q. You haven't paid any subscription price for it?

A. No.

Q. Any other papers that you get from Germany?

A. No.

Q. Or here? A. No.

Q. Printed in the German language? A. No.

Q. What are the circumstances surrounding your wife's return to Germany?

A. Well, we had, of course, three children and my wife [fol. 188] was really eager, especially, to show the twins to her mother because the mother had seen the oldest girl

when she was here, but never had seen the twins and it was the greatest desire of her parents to see them and her and they offered even to take part in paying for the expenses to go over there. That, however, was impossible, I believe, because it was against the directions of the German government to send money out of Germany. And personally, I was not very much in favor of the idea because I had to stay behind and I hated very much to part with my family and my children. But finally my wife went to Germany. The idea was that she was to stay there for about half a year and if she would like it to come back after one year's time.

The Court: Let me interrupt you now, Captain. I announce to counsel that after the testimony is all in, you will be permitted to have an hour on a side for argument. I thought you might want to know that tonight. Recess until nine-thirty tomorrow morning.

* * * * * *

Q. What was the reason for your visiting the Gebhardt family at Murphysboro, Illinois, when you first came to this country?

A. I stated yesterday that I knew two persons in the United States, two sisters, Mrs. Gebhardt was one of those sisters. I knew these sisters when they were little girls, neighbor girls, and Mr. Gebhardt guaranteed or undertook to provide me with means in case I should become a public charity of the United States. I do not recall now what the [fol. 189] official name of that is.

Q. That is required of all those coming to the United States?

A. So it was only natural that I visit the Gebhardt family.

Q. Where did you subscribe to the Berliner Illustriete Zetung, which I think you described as a pictorial magazine yesterday?

A. It was largely my wife who wanted that newspaper because her family had subscribed to it for many, many years before she came to this country.

Q. What is the Elektrotechnische Keitung?

A. That is a purely technical publication dealing with the progress in electrical engineering and kindred fields.

Q. It is mentioned in the complaint or affidavit or in your diary somewhere that you had some activity in connection with the motion picture called "The Confessions of a Nazi Spy". What were those activities?

A. I was approached one day by the German Vice Consul, Mr. Gastreich, to subscribe or to sign a protest against a moving picture called "The Nazi Spy". I told him at the time, as well as I remember now, that I wanted to see this picture first before I would sign any protest against it and I went to the Orpheum Theater, I think it was, where this picture was shown and saw it. I came to the conclusion that this picture was adapted to create friction and hatred among different elements of this country. It seemed to me that the German circles and German societies were suspected as places where the Fifth Column activity would start. At any rate, it seemed to me that it was adapted to throw suspicion on all German people here in this country [fol. 190] as being Nazi spies or people who worked for Germany. I thought it was in the interest of our country to protest against any picture of that kind.

Q. You mean "our country," the United States?

A. Oh, yes.

Q. Did you state about September 1, 1939, that you had no intention of returning your family from Germany?

A. Not in this meaning as it might have.

Q. What did you say?

A. I always intended to have my family back with me. There was no moment when that meaning could have been changed but when the war broke out it seemed to me for sometime that it might have been in their safety more expedient for them to stay a few weeks or month later until this European war would be over and then they would come over.

Q. You didn't know when the war would be over?

A. No, but I hoped it would be over very soon.

Q. That was your only reason for desiring them to remain there for the moment?

A. Well, at the time when the war broke out, I did not have the financial means they asked for immediately on hand. I didn't know how to get it so I could send the desired money to them to come back at that time.

Q. Did you attempt to borrow the money?

A. I attempted to borrow money and I couldn't get any.

Q. That explains the entry in your diary that you made to the effect that friendships didn't rise any higher than $100?

Mr. Milligan: I object to the leading and suggestive [fol. 191] manner of the question.

The Court: Overruled. That obviously was the meaning of the entry in the diary.

A. I tried to get money from friends and Mr. Schwadler, a friend of mine. He didn't have the money on hand. He tried to get it, as far as I know, and he couldn't get it. So, for the time being, after talking things over with him, we decided just to wait.

By Mr. Rhodes:

Q. It is said that in the spring and summer of 1939 you praised the military feats and successes of Adolf Hitler and Nazi Germany. Is that correct?

A. I have to admit that I was amazed by the accomplishments of the German army at that time. It was almost beyond my understanding how a thing like that could be done.

Q. Did you hear others praise the same?

Mr. Milligan: I object to that, your Honor.

The Court: Overruled.

By Mr. Rhodes:

Q. Others spoke in the same vein, did they not?

A. Oh, many, many people. I mean, almost all people spoke the same way.

Q. Did you, in 1938 and 1939, while teaching this boys' class at the Country Club Congregational Church continually praise the military feats and successes of Adolf Hitler and Nazi Germany and confine your talks to that class almost exclusively to that subject?

A. That is not true. I have to say a few words about my speaking about the war in Germany in the Congregational Church. The first occasion at which I spoke was [fol. 192] to Sunday School people at the invitation of Neil Bartley, the Sunday School Superintendent, (it was before I joined the church) to come out and tell those young folks about the schools in Germany and educational sys-

tems in Germany. Later on, I was invited by the Boy Scout group, Mr. Riederer, the leader of the Boy Scouts, to talk to them about my war experiences and consequently these people became known with the fact that I had been an officer in the German army; so, when I became a Sunday School teacher, I never made the war or the German army the subject of my Sunday School teaching. Many of these boys, knowing about my past experiences, were more interested in talking about war and war experiences than they were in ethics and religious philosophy and that kind of thing. I never—at no time did I make any of these subjects concerning Germany or the war the subject of the Sunday School teaching.

Q. You heard the testimony of two young men who had been students in your class here on this stand? A. Yes.

Q. You heard what other older witnesses said? Was it, in fact, a subject of discussion for a time, at least, each Sunday in that Sunday School class?

A. I would not say that it was each Sunday. I don't believe it was. I don't remember, but I don't believe it was and if it was at certain times, it was only for a very short time and perhaps was after Sunday School or before the Sunday School started.

Q. It is said somewhere in this charge that you made frequent week-end trips out of the city from 1931 to 1938. Is that true?

[fol. 193] A. I never made that statement because I didn't make any trips of that kind.

Q. I didn't ask you about a statement, but it is said that you did make them. A. No, I did not.

Q. Were you out at any time on week-end trips?

A. I only recall one complete week-end trip. It was down to the Ozarks with my family. I think it was in 1931, down to the lake, not the Lake of the Ozarks, to Branson and later on, while I was a member of the Congregational Church, I was practically in church every Sunday; and Saturday evening I used to prepare my Sunday School lesson for Sunday.

Q. When did you withdraw from that church?

A. When did I withdraw from church? 1939.

Q. Four years preceding that you were a Sunday School teacher and a deacon? A. Yes, sir.

Q. That would take it back to 1935? A. Yes.

Q. Prior to 1935, were you out on week-ends?

A. No, except perhaps that we went on Sunday to St. Joseph or in the neighborhood of Kansas City.

Q. Did you state that you were an organizer for the German Bund? A. I never did.

Q. Were you an organizer for the Bund? A. No.

Q. Were you a member of that society? A. No.

Q. Were you ever asked to become a member? A. No.

Q. You never sought any information about it, or did you?

A. Well, I heard information about the Bund through the daily newspapers.

[fol. 194] Q. Did you seek any further information?

A. I did not seek any further information.

Q. Did you receive money from the German government?

A. I beg your pardon? I did seek information. At one time a man by the name of Ziegler visited my home, and because he was connected with the German Consulate in New York, I asked him what he could tell me about that organization, the German-American Bund, because we had read so much in the paper; and if I recall right, I think I made also a remark in my diary about it. He told me that it was not even worthwhile talking about.

Q. Ziegler told you that?

A. Something of that kind, yes.

Q. Ziegler is the man that one of the F.B.I. agents talked about yesterday on this stand? A. Yes, sir.

Q. Did you receive any money from the German government at any time? A. I never did.

Q. Did you ever ask for any?

A. I never asked for any.

Q. Did you say, as it is said you said, quoting "some of these days Hitler will make his home in New York City. This country will be overrun by Germans. The American people don't know how to run a government"?

A. I didn't make that remark.

Q. Did you say that? Did you ever think that?

A. No, I never thought it.

Mr. Milligan: Now, your Honor, I object to that.

[fol. 195] The Court: Overruled.

By Mr. Rhodes:

Q. It is said that you said that the German government would send to their operators in this country an empty revolver [sheel] as a first warning and as a second warning a loaded revolver shell and as a third and final warning a silver bullet. Do you know anything about that?

A. I only know one thing: It was told me by the F.B.I. agent, Mr. Menzie, when he interviewed me for the first time and I was very much surprised about it. Later on, somebody told me there had been a neighborhood—somebody told me that there was a neighborhood film in Kansas City called the "Silver Bullet", which treated on that subject, but I don't know just what that film was.

Q. Did you see that film? A. I did not see the film.

Q. Did you further state that the silver bullet was for the purpose of committing suicide if the operator had failed in his assignments?

A. No, I didn't know anything about it. No, I didn't.

Q. Did you further say, quoting, "I have never received my first warning"? A. No.

Q. Did you say that in 1937 and 1938, as it is said you said, that the German people were leading an ideal life, that you could go to Germany and get a job at any time, that a more ideal situation existed in Germany than in the United States? Did you say those things?

A. I never made those remarks. I talked about Germany but I never made this remark.

[fol. 196] Q. Did you make anything similar to it?

A. No. I perhaps spoke about the employment situation in Germany as we learned it here, that Hitler maintained that he did away with unemployment, which after all was a desirable thing to do, but not beyond that.

Q. Did you at any time, as it is said you said, express sympathy for the German cause and say that you were a strong believer in German superiority?

A. I never made that remark.

Q. Do you believe that to be true, the Germans are superior over all other peoples?

A. I would like to say a few words on that superiority subject.

Q. Very well.

A. It includes all the racial beliefs, every racial superiority, that is what you meant?

Q. That is what I understand is meant.

A. But somehow, I never could understand that idea completely, and I think it is due to my more cosmopolitan outlook and my cosmopolitan education. Always in my life I was reaching out for knowledge and for beauties and it is found among different peoples. My whole study of languages can only be explained by that desire to read the literature of foreign peoples in their own language. I studied French; I studied English; I studied Italian; once I tried to study Russian, but it was too hard for me and I gave it up again. I read English literature. I am reading now and enjoying very much Emerson and I read the French literature. I tried to read Dante and I was always convinced that all peoples have specific qualities and some of the Germans—I was proud of the German qualities but [fol. 197] I never forgot that other peoples have similar qualities or qualities in another direction, so I never could understand any racial tragedies of any kind. I have been accused of being anti-Jewish. Witnesses have said that and show in my diary there are remarks against the Jewish people. Now, I never felt anything against the Jewish people on account of their race. I can't understand it, but as a political group, recommending that the United States should go to war against Germany, I was against them as I was against other political groups who advocated the same thing. I did not believe that it was good for this country to go to war. That was my political belief previous to the war. I cannot deny it because I confessed too often to it and it is the truth, so anything that might have been said that I had racial prejudice is not true. It is only political antagonism, if it is such.

Q. Then, you subscribe to the tenets of the so-called "America First Committee", is that true? A. Yes, I do.

Q. Do you now?

A. There is no America First Committee now.

Q. Well, Pearl Harbor has happened in the meantime.

A. Since Pearl Harbor has broken out, I realize this country is fighting for its life. I am a citizen of this country. I took the oath of allegiance and there is only one way for me to go to comply with my oath of allegiance.

Q. It is said that your wife said, after returning to Germany, by cable to you that she wanted to come home [fol. 198] and you told her, quoting you as it is said you said, "Keep her feet on the ground, that she was as safe as she would be in the United States as long as she was not near the front fighting lines".

A. I did not say that.

Q. What did you say to her in response to that cable?

A. In my cable, I just, if I remember right, I don't remember the wording of the cable but I did not write her that I did not get the money but I told her that for the time being she should stay where she was because it perhaps would be safer if she would stay there, meaning if she would come across in time of war the ship might be torpedoed or she might be interned because she is not an American citizen. She took out her first papers and by neglect just neglected to take out her second papers, her American citizenship papers, as so many other people did, and if she had taken out both she might have been interned. Many people have been interned that way.

Q. She had your children with her?

A. The children are with her so the children probably would have gone to an English camp somewhere, if the English had taken her off the ship, as I heard many people were taken off ships in Italian ports or when they were stopped on the seas.

Q. It is said your wife said, before she left here, that if she liked Germany and if conditions were right that you, her husband, were going to sell out and go to Germany. Do you know if she said that?

A. I don't know whether she said it but I don't believe [fol. 199] she said it.

Q. Did you ever have any such intention?

A. No, I never had the intention.

Q. Did you ever discuss that with her?

A. I don't think I did. I don't remember it. There have, however, been occasional talks about that. I would not deny that. There may have been talks about how people live in Germany today and some of our friends had gone back to Germany, so it would only be natural to talk on the subject, but I do not remember that we ever talked on it as if I had the intention to go back to Germany.

Q. Did you ever hear your wife say, "I am full up to here of America", pointing to her neck? A. No.

Q. In 1938, it is said that you made statements of strong sympathy for Germany and indicating your belief that Hitler was the man who was saving Germany. What about that?

A. Well, I, of course, spoke on Hitler and his relation to Germany as hundreds and millions of other people did, that apparently it seemed Hitler got Germany out of chaotic economic condition which had been recognized by many people. I think it is still being recognized. He has done other things for Germany which probably are not so desirable, but that is what I meant.

Q. Did you say the German people were behind Hitler?

A. I think I said that or could have said it. I don't remember when I said it but I could have said it..

[fol. 200] Q. Did you say when Germany invaded France that there was, quoting, "nothing in the world that had ever been accomplished like that"?

A. Well, I may have said it; I don't know but doubtless I don't remember anything that happened before that was like it.

Q. Is it a fact that nothing had ever been accomplished like that, isn't it?

Mr. Milligan: We object to that.

The Court: Overruled.

By Mr. Rhodes:

Q. Many other people said the same thing, didn't they?

A. Millions of them. I think the newspapers said the same thing.

Q. A witness here said that in the early fall of 1939, in replying to a remark about Hitler stating that he was no good, that you said to that person, who was Mr. Heinrich, quoting you, "If you are not for Hitler, you are a traitor to your country."

A. I never said that, made that remark.

Q. Did you say anything like that remark?

A. No, no, nothing that could be like that.

Q. Do you believe that is true?

A. No. I can't understand the sense of it. I don't know what it means.

Q. Mr. McKenzie, your boss when you first went to work for the Kansas City Power and Light in 1927, testified here that you were expressing opinions so violently in favor of Germany—those are not his words but that is the meaning—that you were causing discontent and possible trouble and he had to transfer you to another working unit [fol. 201] of some sort.

A. There were only two times that I remember, that I never made any remarks in favor of Germany. I was asked by these fellows with whom I was compelled to work at that time about Germans doing certain work in line work. I personally hadn't done that but I saw it done and I will tell them what I did and tell them of certain differences because I hardly could speak English fluently, so it seems to me also that logically I couldn't have done that, if I had forgotten, because it was nothing to be proud of at that time, about the conditions in Germany. Germany was in an awful state in every respect and as far as my transfer was concerned, I was transferred but I never heard this reason given before.

Q. Did you say in 1941 that the reason you sent your wife and children to Germany was so that your children could be better educated?

A. I never made such a statement.

Q. And be brought up better there?

A. No. In fact, we realized that this visit of half a year or one year would be detrimental to the education of our children because it would be an interruption that could not possibly be good at that age. Little children would possibly forget the English language and they would be torn out of their course of education.

Q. Did you say you were not going to send for them until after the war since you wanted them to come back on a German vessel?

A. I didn't make that remark in that form. If I made a similar remark, it was perhaps pointing out that my family, when they left here, took return tickets with a German steamship line and my wife wrote me that the German steamship line declared the tickets still would be good, that they could take a German boat of that line and come back.

[fol. 202] Q. At that time, when your wife cabled you for money to return, you were unable to borrow the money to send to her so that she could purchase passage?

A. That is right.

Q. Did you say, in response to advice given to you that you should return to Germany, "Well, I don't have the money," and at another time, "It is a long way and takes a lot of money"? A. I don't think I made this remark.

Q. There is nothing wrong in your making it, as I know of?

A. I don't know that I made it; I don't think I did.

Q. In your diary and it is stated you sat up practically all night listening to Hitler's speech and said something to this effect, "It was a very fine speech" or "a wonderful speech". Tell the Court the circumstances of listening.

A. I may have said it; I don't remember the instance but I may have made the remark that the Hitler speech was a fine speech.

Q. Did you sit up all night listening?

A. I remember on one occasion that the Kansas City Star advertised that early in the morning there would be a rebroadcast of one of Hitler's speeches and I heard that many people got up early in the morning to listen to Hitler's speech and I got up; I know my wife didn't get up but I did get up and listen to it.

Q. What were the circumstances of the finding of this diary that you kept from December, 1928, to July of 1941 by the F.B.I. agents?

A. Why I kept this diary? Well, I have to say a few words about the psychological background.

[fol. 203] Q. Of this diary? Very well, go ahead.

A. I believe that of course, as I mention in the diary, as I remember, that I just wanted to make an experiment with myself to write the diary to see if I could keep it because diaries are sometimes started and not kept up but I remember distinctly as time went on that I thought it was a good idea to have a diary to simply see later on how my emotional life was affected by world events of a kind that we hardly had seen before. Now, another thing has to be mentioned; I had always a belief that after I became a citizen that I was a member of this community just as well as we are a member of a family. That means

free to disagree and free to criticize as well as free to be helpful and to be generous. I thought I had the same right excepting becoming president of the United States, which is not possible for a naturalized citizen, to behave in the same way as any other citizen would, even to the extent of becoming abusive of the administration. I did not, however, approve—

Mr. Milligan: (Interrupting) I object to this as self-serving statements and ask that it be stricken out.

The Court: Just a moment. I will rule on the objection. This man's mental thoughts are the very subject of this case. Of course, it is not a self-serving statement. It is entirely competent. Overruled.

By Mr. Rhodes:

Q. Go ahead.

A. I did not believe at any time when I made remarks of this kind to people here in town that somebody should use profound names for the head of our nation and I do [fol. 204] not believe that I ever did it, not because of the person who may be called with profound names but out of respect for the position.

Q. You said "profound names"; you mean profane?

A. Profane, I mean. That was always my opinion and it is my opinion today. Also, I thought that I could disagree with the policies of the administration and I did disagree in respect to their policy of the war as I thought it was their policy about the war. Furthermore, this belief in the absolute freedom of thought and expression, in my sight, was extended by certain things to everybody talking in that tenor and I remember I read Beardsley at the front page of the United States history, the famous saying of Foltaire, "I disagree with every word that you say, but I will defend to the death your right to say it." All these things helped to create in me the belief that I could do what I wanted and disagree with whom I wanted as long as I thought it was in the interest of the country.

Q. The affidavit here attached to the complaint, at the top of page 5 of the affidavit it says in part, "A reading of this diary discloses further, that the said Baumgartner made journeys from his place of residence during this pe-

riod of time visiting the Wilson and Wheeler dams, and other noted National projects. This Daily Record kept by the said Baumgartner contains references to certain individuals in Kansas City, of German ancestry, whom he branded as being 'cowardly' and 'as coming out against Germany', and said diary evidences the fact that said Baumgartner listened daily to short wave German broad- [fol. 205] casts on his short wave radio set." What do you mean by "cowardly" and "as coming out against Germany", if indeed that is true of your diary. What would you mean?

A. "Cowardly", probably I put that down in connection with my work as a member of the Steuben Society. When I came to this country, I didn't know anything about it but when I came to this country I found that the people of German ancestry and German descent had developed what I would call an [inverior] complex and which was brought about, in my opinion, by prejudice during the last war and bad treatment of the German element in this country during the last war. I heard people say, "Why, as Germans we can't speak up; we have to lie low." I do not believe that any country, especially not a democratic country, can exist successfully if there is a large element in that country that have an inferiority complex of that kind. They should not have those elements and if people adhere to that belief that they should lie low and not speak up, they are not an asset to the country. They are cowardly; that is what I meant.

Q. On January 30, 1939, as translated for the translator for the government in the entry in your diary—

Mr. Phelps: (Interrupting) What date was that?

Mr. Rhodes: January 30, 1939.

Q. (Reading) "Today Adolf Hitler made his long-awaited Reichstag address. I heard there—broadcast of this speech on the German short wave broadcast from 6 to 8 p. m. The reception was so wonderful that the entire [fol. 206] speech could be clearly understood. The speech was very frank and clear, and I was somewhat surprised to see that the newspapers called it one of the most unwarlike which Hitler ever made. It impressed me as though

this reaction had already been decided upon without consideration of what the contents of the speech might really be. The Jews and the Catholic Church were both sharply rebuffed," so the translator said. Is that a correct translation, first, the "sharply rebuffed", as you had it in your mind in writing it down at that time?

A. I really don't remember the passages of Hitler's speech at all but when I read, as I did my own diary, and compared it with the English text, simply as a technical difference which I discovered, I think I expressed "harshly treated" but I would not say that that changes very much the sense of the sentence. It reflects somewhat on the possibility of the translator not to translate literally but put the sense down as he sees it.

Q. You made a long entry in your diary of February 25, 1939, which had to do with the subject of your visit to the home of a certain Mr. Roessel—he was here on the witness stand—where the German Vocational League was meeting for a film performance. In your diary you say, "Since I wanted to see what sort of an organization this Vocational League was, I accepted, as I have said, Jardon's invitation as well as Gastreich's, who is also a member." Were you invited to go there? A. I was invited to go.

[fol. 207] Q. Did you seek such invitation?

A. I received the invitation.

Q. Did you seek it out? A. Oh, no, I did not.

Q. Did you attend any other meeting of that League?

A. I never did.

Q. Or anything that you would think was similar to that League? A. No.

Q. Did you ever attend any of the meetings of these various organizations, if they are, in fact, here described on this stand yesterday by Dr. Kempner, the former Berlin judge and teacher? A. I never did.

Q. Did you ever hear anything about them except this German Vocational League?

A. Except the League, I never heard about any organization. I heard the people say there is a Bund organization here in this city but I personally have never—I never had any direct contact with it. In fact, I was interested to find out whether there was one here, but I never could find anybody who would give me information on it.

Q. One paragraph of that entry in that diary of that date was read yesterday by Mr. Phelps, which is, "This Mr. Lagna opened the meeting with the German national anthem, whereupon everyone naturally arose and assumed the usual German stance with the arm extended to give the National Socialist greeting. I immediately had the feeling that something seemed to be wrong. This feeling grew stronger when Lagna, in his speech, painted the situation of the German Americans very black and stated that we could really do nothing except have an occasional con- [fol. 208] genial get-together such as this one. In other words, we meet behind closed doors and darkened windows, sing the German national anthem courageously, give the National Socialist salute even more bravely, and then decide that we must all be nice and quiet, that we can do nothing, and that things might even get worse." What is your explanation of that.

A. Well, I remember only this about it: This man's name, incidentally, as he is known to me, is L-a-q-u-a (spelling), and he said on several occasions, he maintained he was a citizen but finally we found he wasn't a citizen. He once tried to become a member of the Steuben Society and by discussing the man amongst ourselves we then found out that he was not a citizen. Well, this opened the meeting and the whole location seemed to me ridiculous, contemptible. In the first place, these were probably all decent people. I don't think there was anybody in that crowd that was a disloyal man. I don't believe so, but to show there was something that held them together, I later on found out that they belonged to what is called the German Labor Front, but I did not know that. I did not know that the German Labor Front was at that time. I was of the opinion if people of Germany, of German descent, would come together and even if they liked to sing the German national anthem, they should do it in the open. I thought if people closed their doors and pulled the shades they must create the impression among other people, if anybody should find out that there was something wrong they were doing something forbidden, something illegal, and it was, I think, a very sarcastic feeling and disapproving feeling that prompted me to make that entry into my diary. I did not agree with them in the least, how they did things.

Q. What does the letter "D" indicate?

A. Well, as the man said yesterday, I believe it means the first letter of the word "Deutsch" which means German. I think that is what it means.

Q. In what significance is it used as insignia on the uniform?

A. I didn't know at that time but later on, I believe, somebody told me it means "Deutsch - Americanische Berufsgemeinschaft"; that means the German-American Vocational League.

Q. On March 23, 1939, you made this entry, which Mr. Phelps read: "Today I heard the radio broadcast of the entrance of Hitler into Memel. Dr. Neumann spoke and then Hitler himself. The church bells could be heard during the entire broadcast. This ends another of the crazy doings of the western democracies." Please explain that last sentence.

Q. Largely, I am not quite capable of explaining many of those things because I do not remember how they were prompted and what was the reason for them but I believe this, that in that case it was the thought of the Versailles Treaty. I was in Germany after the war and I knew how Germany had been treated by the Versailles Treaty and I don't think it was a very nice way. Whether that was deserved or was not deserved is beyond the question but I thought that the mutilation of Germany after the last [fol. 210] war contributed a great deal to create Hitlerism and finally to create this war and the western democracies at that time—I don't know what I thought but I must have thought of England and France because as far as I remember, the United States was never signatory to the Versailles Treaty and never approved of all of these European dealings.

Q. They were not signatory of the treaty; I don't know about the approval, whether it was approval or disapproval. That is your explanation of that as you now see the matter, at least? A. Yes.

Q. On March 29th, you made this entry; "Sachs came over in the evening to discuss the card party with me which the Steuben Society intends to hold in order to make some money for publicity for the National Council. Sachs is a good fellow and a good German who has not been Americanized, that is, ruined."

A. When I read this in the diary I was shocked because I read it in English and I could not explain at the moment what I meant; by reading the German translation, I remembered. If you use the German language, it doesn't know the meaning of the "Americanize" as we understand it. If we say we want to Americanize a man coming from a foreign country, we mean we want to educate him to see our democratic ways of living, of our duties as citizens, to take active part in public affairs and so on, all very fine things to which I have always subscribed and which I believe; but if in Germany I would say a man is "Americanized," I think that all people in Germany, not knowing anything about our intentions to make a good [fol. 211] citizen out of man, would interpret it this way, that this man acquired the bad characteristics of the American people. Now, I have to say this about the bad characteristics of the American people among European people: If you speak about the "Americanizing" in Germany, we would think immediately of Americans as dollar hunting materialists and nothing else. That is sad as it is but many people think of America that way and of American people.

Q. Many European people do, you mean?

A. Yes, they do.

Q. Is that thought confined to Germany?

A. I think it is not confined to Germany.

Q. Mr. Phelps also read an entry of Saturday, April 22nd.

Mr. Phelps: What page is that?

Mr. Rhodes: That is on page 15 of the translation which is the second or checked translation. I don't know which one you said.

Q. Saturday, April 22: "In the evening I went with Schwedlers to hear a talk by a German student in the Turner Hall. The speaker's name, I believe, was Schmitz, and as he told me, he had studied in Berkeley, California. He spoke about his experiences in a German work camp and of his two years in the army. As a soldier, he [marked] into Austria with the German troops. One cannot blame him for being so enthusiastic about the new Germany and for speaking so disdainfully about America in spite of the

fact that he is probably acting contrary to instructions." Please explain that.

A. I tried to recollect what determined me to put that [fol. 212] down, that I thought disdainfully of American; and if I remember, we talked to this man personally and he mentioned our record of juvenile delinquency in America. Somehow, I think it was talk that the youthful delinquency is very, very high compared to Germany. Now, if he thought that, I was in a way justified to speak as I did. Personally, of course, I have no knowledge. I don't know whether that is true or not, but if it were true, one could not blame him. I think that would be the explanation as I can recollect it, and the latter remark, I remember that very distinctly. He spoke against instruction. When this man Zeglin visited me or visited us, he mentioned these German-American—I mean these German nationals in this country and that he, as an employee of the German consulate, was instructed to tell them not to say anything that could antagonize the people of the United States. So, I remember that very distinctly. That is what I had in mind.

Q. Going on, you said, "The talk was very interesting, not so much from a general standpoint as from the consideration of the speaker himself who probably represents young Germany quite accurately." That was read by the Assistant United States Attorney. Have you any explanation to make of that? I don't know that it requires any, particularly. Did you understand what I read?

A. Yes. What is the question about it?

Q. Have you any comment to make on it? "The talk was very interesting, not so much from a general standpoint as from the consideration of the speaker himself who [fol. 213] probably represents young Germany quite accurately."

A. It would be interesting to meet somebody who represents young Germany, simply for scientific reasons.

Q. On April 28, 1939, Friday, you say: "Got up at 4:30 to hear Hitler's speech. There are no words to describe how wonderful it was." Now, that is the translator's translation. What is your translation of that?

A. Well, the translation, as I remember, was—I mean the literal translation, it would be improper to grade the speech, that is, call it good or bad or better or best. Exactly what I meant I don't remember but I notice that

difference there simply again to show that the translator may not be able in many instances to translate a sentence or word literally because it wouldn't make much sense, so he uses his own discretion, uses his own interpretation to put down what he thinks the writer thought when he wrote it.

Q. I am seeking your thought. I am not saying it was not impossible to say literally "made a wonderful speech".

Q. It is quite possible I thought it was a wonderful speech. We have many times heard, I believe, at least I have, before I ever heard Hitler speak myself that his speeches are fascinating speeches. That was the only time I really heard anything directly about Hitler in Germany, that was before I came over to this country, was when a friend of mine who studied architecture in Munich told me during his vacation time when he met me that he had gone to one of Hitler's meetings and during the time he [fol. 214] listened to that man Hitler he said he was quite under the spell of his oratory and he did not feel to have any objection to anything. It seemed everything was logical, everything was fine, what he said, although after he came out and later on thought about the speech he thought there were fallacies in the speech, but not while he was listening to the speech; and the fact of the matter, it appeared to me the same thing, that Hitler's speeches are very, very interesting to listen to.

Q. On September 3, 1939, you made this entry and this was read by Mr. Phelps yesterday: "Newspapers tell us that England has declared war on Germany. The German short wave station is a blessing. The Jewish newspapers (Star) can hardly hide their joy. Stayed at Schwedlers almost all day. Letter to Bobby." "The Jewish newspapers (Star) can hardly hide their joy."

Q. Well, I suppose the newspapers enjoyed it, I don't know, I don't remember. That is simply a statement about the newspapers, I suppose; I suppose I had that impression by reading it.

Q. On September 4th, you made this entry: "The lying British propaganda is spreading the news that a German submarine torpedoed the Athenia. This ridiculous statement will hurt the British. Took Eyssells to Schwedlers in the evening." What about that?

A. Well, at that time, I did not believe that the Athenia was sunk by a German submarine. It seemed to me, as I remember, not logical for the Germans if they started out a war to start out with such a foolish act as to sink a passenger ship.

[fol. 215] Mr. Rhodes: I am trying, your Honor, to pick up those passages that Mr. Phelps read.

Mr. Phelps: The next one is the entry of September 22, 1939.

Mr. Rhodes: I must have missed that. Yes, I did miss that and deliberately so because it had already been gone over but I will read it again.

Q. (Reading) "Received telegram from Bobby that she wants to come back and needs $600. With this six hundred dollars I found that it is difficult to find a friendship which goes above a hundred dollars. I do not like the fact that Bobby wants to come back now. It is dangerous, and, considering what might happen here, it is not a good idea either." I am quite sure I have covered that except this last sentence of the last quotation in which you say, "It is dangerous, and, considering what might happen here, it is not a good idea either." What do you mean by that?

A. Well, I only again can't try to logically define what I meant. Actually, I couldn't say what I meant but I believe that I meant and I referred to the treatment of German people during the last war, perhaps that if this country would be against Germany during the war times, that German people would have an awful time or something of that sort. I don't know whether that is correct but it might have been the reason.

Q. The next entry is October 22nd.

A. In the meantime, I found all of these things didn't come through. Many people thought there would be a wave of hysteria and they would be persecuted and all that [fol. 216] kind of thing. Well, I am happy to say that to that extreme nothing happened.

Q. "To that extreme"?

A. To that degree or that extreme.

Q. The next entry of October 26th I am skipping unless the United States Attorney wants to go into it. June 25, 1940, is what I have next: "Stayed home in the evening. Mrs. Eyssell showed me her Red Cross button which she received for her donation to the Red Cross. This is a fund which is intended exclusively for England and the Jews, and, therefore, against Germany. Comment superfluous." What do you remember about that?

A. I remember about this because it was a discussion between myself and some employees, I think, of the Light Company. I believe that the chairman of the Red Cross Committee here in Convention Hall, in the Auditorium, made this remark: We collect this money for the Red Cross but you may be assured that Germany will not get one cent of it." So, I think that is probably the interpretation of it.

Q. Now, on Wednesday, August 28, 1940: "Meeting of the Round Table in the evening concerning the holding of German Day. Luke-warm sentiment. Otto Schmid comes out openly as an enemy of Germany. Declines to name a committee to investigate the German Day situation. I, as Vice Chairman, am finally empowered to do this." Otto Schmid is an Assistant United States Attorney here and you knew that? A. Yes.

Q. What is your explanation of that entry?

A. Well, I, up to that time, never had anything to do with the organization of the German Day. German Day is, [fol. 217] I believe always organized by the Round Table under the leadership of Otto Schmid and it seems to me at that time that because he refused to continue this custom of the German Day, which was purely an American affair and had nothing to do with Germany excepting that it was done by the German nationals and usually was in commemoration of the coming to this country of the early settlers and they celebrate Pastorius Day, the German day. I thought that was not the right feeling. He always helped to organize the German day, then all of a sudden he refused and—well, he was hostile, I believe I said. I don't remember what he said to Germany—not to Germany but to us that was his reason to refuse to organize a German Day. I couldn't see the point because this was not a German affair. This was an American affair.

Q. On December 29th, you said: "Took my morning walk alone. Saw neither Mehringers nor Gruermanns. Went to Schwedlers in the evening. Listened to Roosevelt's slanderous speech." What do you mean by that?

A. Well, I evidently did not agree with Roosevelt at all. In fact, I probably took violent exception to what he said. I don't remember what he said.

Q. That was on December 29, 1940. That was the year of the general election, wasn't it, or was it? A. Yes.

Q. I don't know; it may have been something of that kind, I don't know.

Q. Some other people had been saying something to that effect had they not, during the autumn? December 31st, [fol. 218] you said: "Hitler's speech, the New Year's address to the German people, was an effective answer to Roosevelt's false and twisted statements." What do you mean by that?

A. I believe there was a lot in our newspapers about Hitler's speech, the reply speech to Roosevelt, if I remember right now. I didn't even think of it before. There were certain points that President Roosevelt used in his speech to which Hitler afterwards referred and I think Hitler in his speech replied to each point of Roosevelt's speech individually but just what those answers were I don't remember.

Q. But which you considered effective at the time you heard it?

A. Perhaps purely intelligently I thought it was good logic to reply that. It was concerning mostly European affairs, about certain countries in Europe.

Q. Did you during all this time, as you analyze yourself and your own mind, being objective about it and being intelligently honest about it as nearly as one can be, did you during all of this time in which you were saying words in connection with Hitler and Germany which have been characterized as praising them, did you have a mental consciousness that you were for them as against this country? A. No.

Q. Have you ever had any such mind?

A. Let me speak about this party, speaking about Hitler and Germany, I mean myself speaking about Hitler and Germany, it was always simply rational thinking; I mean, it was made on certain assumptions. I had never

[fol. 219] met Hitler. I never saw the Germany of Hitler in my life and whatever I thought about those things was simply systematic, rational thinking; making certain assumptions which could be wrong, why, then the whole picture was wrong. Presumably all of those assumptions were wrong. I like to do rational thinking and in my conversations I always do that, simply for the fun of having the conversation, make an assumption and then build up something, a conversation on top of it. I don't know who Hitler is. I don't know anything about him personally. The Germans, as we read in our papers, he is a saint or a Messiah or something of the sort. We say exactly the opposite. Well, if we talk about Hitler, we may assume either one or the other premise or we may assume an average of it and then build up our talk about it. That is the only way I can. That is the only way I ever did talk about Hitler or Germany.

Q. On May 4th: "Listened to Hitler's speech from the Krolls Opera House on 15.2. It was wonderful as usual. The idea of the whole speech was 'nothing is impossible for the German soldiers.' In the afternoon I went to the Uptown." What is your thought on that?

A. That seems to be only a statement of fact.

Q. "It was wonderful as usual", you say.

A. Well, again I have to give the same answer, that Hitler's speeches in a way have always been fascinating. I think everybody understands that.

Q. On June 17th, 1941, you say: "The whole country is under the influence of the insane actions of the Govern-[fol. 220] ment in Washington which have the character of wild, [ungridled) despotism. Practically no German citizen can leave the country. They are held as hostages, say the radio announcers. In contrast to this, Germany has always treated Americans with the greatest respect." Have you any comment to make?

A. That is a rather violent emotional eruption which I can not explain today, excepting perhaps if the radio announcer announced that the Germans are detained, that I thought it was a despotic thing to do, and what was the last sentence?

Q. The Germans "had always treated Americans with the greatest respect."

A. Well, in this respect, I remember what I saw in Germany after the last war of the treatment of the American people. I saw that when the tourists came to Germany. I saw bands go to the railroad station and receive them and they were always treated with great friendliness and respect. Later on, I didn't know that at the time I was in Germany, later on when I came over here I heard that the American people who visited France were not treated in the same manner at all, but they were treated almost as enemies. They were exploited. They had to pay two or three times as much as natives.

Mr. Phelps: I object to this as hearsay. It doesn't cover any point in the world in this case.

Q. Well, I think it has no point. I will withdraw it.

The Court: Counsel withdraws it.

Q. Explain about the Steuben Society and your connection with it.

[fol. 221] A. I became a member of the Steuben Society, I think it was in 1936. I don't recall exactly the year now. I never belonged to any German society or German national society, and the Steuben Society was described to me not as a German-American society but as an American Society, and my old friend Gustav Schwadler asked me to become a member and help them to carry on their work which consisted largely in patriotic work, that means to make better citizens and good citizens out of German immigrants that come to this country and all of the German citizens of German descent in this country. I read the constitution and I read their publications and their publicity and I found that I agreed almost one hundred percent, actually one hundred percent with their aims and purposes. Then I became a member. Then, as time went on, of course, the Steuben Society had certain political aims. One of them was to keep this country out of war when that question became acute, and I worked there according to our policies along with the Steuben Society. We always stressed that the Americans of German descent should take a more active part in politics and public affairs than they actually did. Again I mentioned something before in this connection that they had an inferiority complex. They didn't want to do anything. They didn't want to go into

the limelight because somebody might call them a "German". They were afraid to be called Germans. That antagonized my feelings. I couldn't see why they would not want to be called Germans. They had the same right to be called Germans, the same pride, as the English have to [fol. 222] be called English, and the Irishman to be called Irish. That was largely my enthusiasm to the Steuben Society, that they wanted to remove the complex which apparently was built up during World War I. When war finally did break out the Steuben Society adopted the standpoint of 100 percent support of the Administration in the conduct of this War and from that moment all activity stopped to oppose the Administration.

Q. Did your activity stop with it?

A. Absolutely. In fact, my activity was put in reverse compared with the activity before in regard to the war. I don't think that I ever missed an opportunity in any meeting to tell the members that from now on there is nothing to do but to think of the welfare of the country, that is, the successful conduct of the war.

Q. Did you ever return to Germany after you came here in 1927? A. I never did.

Q. Your family is living there still, some members of your family, not your immediate family?

A. There are no members of my immediate family alive today. They are all dead.

Q. Are you now an adherent to the principles of our government? A. Absolutely.

Q. Have you been since you became a citizen?

A. I always have been.

Q. Were you before you became a citizen?

A. I gradually became—I gradually adopted the principles.

[fol. 223] The Court: Has there been any distinction at any time since 1932 in the nature of your adherence to the principles of the American government?

A. There has never been any change. I realized at the time when I took the oath of citizenship what I was doing, I realized it completely just as I see it today. And for me the taking of the oath of allegiance was a cold sober matter, nothing emotional about it at all. I took a solemn promise to support the principles which I at that time

thought were right for all the time until I would be released from that oath.

The Court: Well, my question is, Mr. Baumgartner, was your attitude towards the principles of the American government in 1932 when you took the oath the same as it has been ever since? A. Yes.

The Court: All right.

By Mr. Rhodes:

Q. You then renounced all allegiance to anyone or any country except the United States when you took that oath?

A. I refused any allegiance to any other country but the United States.

Q. Has that been a constant thing since that time?

A. Absolutely.

Q. And is now? A. And is now.

Q. Are now ready, able and willing to take up arms for this country?

A. Anything that my duty as an American citizen implies, anything, the taking up of arms, becoming a sol-
[fol. 224] dier, anything.

Q. Now, I want to pin you down precisely. Would you now be willing to go to Germany and invade Germany in behalf of the United States if the military orders made it necessary?

A. If I were ordered by the military to do so, I would do so.

Q. Has that always been true in your thoughts since you became a citizen? A. Absolutely.

Q. I think I have covered this, but have you ever had any contact of any kind, inquiry, received any instructions from or requests to aid aside from the literature you received from this propaganda bureau of New York of the German government—aside from that, any German agency, representative, association of any kind?

A. I think I said yesterday that on a few occasions I received publications or little pamphlets from Germany. I don't know where they came from, but they were very few occasions, perhaps three or four times, but none beyond that.

Q. You heard yesterday, I think, the [gentleman] from our State Department, Dr. Trivers and Dr. Kempner, their

explanation of the architecture of the German government under Hitler. You heard that? A. Yes.

Q. Did you know anything about that before yesterday?

A. Nothing, nothing whatsoever. It was new to me, the whole explanation was new to me.

Q. Had you ever had any literature that explained that?

A. No, not about this, not what they said.

The Court: It was all new to you?

[fol. 225] The Court: It was all new to you?

A. He said a great many things; I refer right now in my mind to the statement he made that the German government or Hitler recognizes all German people in foreign countries as German citizens.

The Court: You mean in that respect. But otherwise, the characteristics of the principles of the German government, do you say that was all new to you?

A. I don't know exactly.

Mr. Rhodes: I was speaking, if your Honor please, I was speaking of the decrees of Hitler, laws under Hitler starting 30 days after he took over in Germany on January 30, 1933, thirty days after that, starting then and ending, I believe, in July of 1933, wherein there are a number of different laws and decrees.

The Court: That is what I thought you were speaking of.

By Mr. Rhodes.

Q. Did you know anything about that?

A. I don't know about any official laws or the publication of laws of any kind.

Q. Did you know anything about the passage of those particular laws that he described yesterday?

A. I didn't.

Q. At any time until yesterday?

A. No, at no time.

Q. Well, do you subscribe to the theory of government which they set up?

[fol. 226] A. Oh, no. There is no dual loyalty.

Q. I am not talking about dual loyalty, I am talking about these laws and the system of government set up in Germany for the control of the German people; under those laws do you subscribe to that theory?

A. I never subscribed to them, but I have this to say, to be honest, I don't remember exactly those laws. I heard them yesterday, I admit, but now when you are referring just to laws, I do not remember what you mean. I don't know what you mean exactly in words.

Q. Well—

A. (Interrupting) He said a great many things yesterday.

Q. Yes, I know that. I think I can refresh your mind and make it more specific, my thought on it. Dr. Trivers, I think stated the law of February 28, 1933, which he titled the "Law for the protection of the people in the state," which he said in effect suspended the Bill of Rights as we know it and as it was then in Germany under their form—I don't know to what extent it was—which was then promulgated and to be in effect until further notice. No further notice has ever come. Do you agree with that?

A. I disagreed with that completely.

Q. On March 24th, the so-called enabling act, entitled the "Law to Remove Distress of People and State," did away with the parliamentary government as it had theretofore, did you disagree with that?

A. I disbelieve in that.

[fol. 227] Q. Did you know anything about it before?

A. I did not, I know what I read in the papers, that Hitler did away with all rights of the people to determine the course of government, I knew that, but I did not know anything about these laws passed.

Q. Or the effect of what the newspapers said?

A. Yes, I never believed in that kind of system at all.

Q. Now, those two laws according to Dr. Trivers gave the basis of the government for decree and fiat and dissolved all other political parties except the National Socialist Party known as the Nazis. Do you agree with that?

A. I don't agree with that. Fundamentally, I am a thinking man and I want to take my part in the conduction of the affairs of the country. I couldn't possibly

agree with anything of that sort that would exclude me from it.

Q. In July, 1933, a law prohibited the formation of any other political parties and made the Nazi party the sole party in Germany. Do you agree with that?

A. I don't believe in it.

Q. Did you know anything about it at the time?

A. None beyond newspaper writings about it.

Q. Have you any present recollection that you knew anything about it from newspaper writings at that time?

A. Only in a general way, that the right of the German people to take a part in their government [were] abrogated and I disagreed with that. I didn't believe in it. Outside of this I don't know anything about it.

[fol. 228] Q. Those are the laws I am speaking of, and they do create a form of government which is in my language, it may not be correctly accurate, a complete tyranny. Do you agree with that or not?

A. I do not.

Q. Your mother-in-law visited you here in 1933 or '34, which was it?

A. I think it was in 1933.

Q. At that time, I believe it has been stated, if it hadn't I will ask you if it was the subject of discussion in your household about the conditions in Germany?

A. I beg pardon?

Q. Was that a subject of discussion, the conditions in Germany at that time?

A. Oh, yes, that would have been. When my mother-in-law came, Hitler had been in power for a short time, I don't know how long.

Q. She came in '33?

A. She was very enthused, particularly about Hitler, and we teased her, we made fun of her as we say, occasionally, about Herr Hitler as we call it. Well, one significant thing took place after she left. I think she stayed with us about two or three months—she continued to write in a more or less enthusiastic way about Hitler and gradually that faded out of her letters and I think after about two years' time, why, she never mentioned anything about Hitler or the form of government any longer. She didn't disapprove, but she didn't mention it any more

Q. Do you hear from your family in Germany, your immediate—

A. (interrupting) I had two communications since the [fol. 229] War through the International Red Cross, both communications were handed to me by the Kansas City Chapter on my return from my vacation trip this summer. One was dated January, and contained 24 words, about, and said that—my wife wrote the words that they were all well and that they received my last money order which I sent to them by the Postal Union Company. And the second one was dated April and contained this communication, in substance: "We are well. Please send us some money if you can." I was permitted to send 24 words, communication, to them, and I gave them my love and told them that I was well, and that they should address the nearest representative to apply for money. That was all that I could write. I had that information about the Swiss government taking care of these needs from the State Department, to which I wrote immediately after the outbreak of the war as well as to the Red Cross to tell me of any means and ways to support my family, to continue to support my family, and the State Department wrote me that I need not worry about them, that the Swiss government is entitled to take care of these needs whenever they see fit, if people need the money and that they were entitled to give a certain amount of money to American people in foreign countries, which I would have to reimburse the Swiss government for later on through the American government. I have never received any request so the conclusion would be that the Swiss government did not see fit that they should get money.

Q. What is your salary?

A. About $220 a month.

[fol. 230] Q. How long has it been that much?

A. Oh, I think about a year or year and a half. It was always less before.

Q. What was it before?

A. About $210, and before that about $195, and so on. I don't recall exactly.

Q. Are you a man of means?

A. I am not.

Q. What does your property consist of, may I ask?

A. Beg pardon?

Q. What does your property consist of?

A. My property consists of a few preferred stocks, my household property, which is in storage, of life insurance, that is all.

Q. Is your household property in storage here?

A. It is in storage here in Kansas City at 63rd and Troost.

Q. Has been since your wife left?

A. Has been since my wife left.

Q. There has been some statement here, I believe you have answered about that antipathy to the Jews. Are you against the Jews as a race?

A. I have no racial prejudices of whatever kind against any race. I told before, that if I said something against the Jews it was as a political opponent, not as a race, by any means. I don't want to be prejudiced either, racially, by anybody.

The Court: Do you approve of the fining of a whole people because of the alleged offense of one people? You refer to it in your diary.

A. When did I do this?

The Court: The fining of Jewish people because of [fol. 231] the assassination of a German official. Do you approve it? You say it was right that they should be fined.

A. I don't recall that I made the statement, but I surely do not believe in it. If I made the statement, why, I cannot explain just why it was made, but I don't believe it.

The Court: That was done, of course, you know.

A. Who?

The Court: That was done by Hitler. He fined the whole Jewish people because of the alleged offense of one member.

A. I remember now, your Honor, what you are referring to. I did not approve of that. That was not the idea of that entry.

By Mr. Rhodes:

Q. What was the entry, Mr. Baumgartner?

A. It was something about—I don't recall the wording of it, but I believe that—I don't exactly remember it. I couldn't refer to it now.

Mr. Rhodes: If your Honor please, I don't dispute you, but I have no recollection of that in the diary.

The Court: Let me have it, I can find it in a moment. My copy has disappeared. Continue with the examination, I will find the entry.

Mr. Milligan: That is Monday, February [t], 1939, in the diary.

The Court: Here it is, Mr. Baumgartner. You can read it for yourself. Monday, February 6, 1939. (Plaintiff's Exhibit 9 handed to witness.)

A. This was entirely expressing a feeling about this [fol. 232] man who was with us. I did not mean to express approval of his policy as set out there.

By Mr. Rhodes:

Q. You say this under date of February 6, 1939, of the diary: "The imposing of the billion mark fine on the Jews in Germany made him—" the antecedent of which is Bernhard Mueller of St. Louis. Is he the man who was on the stand here? (continuing) "—extremely angry because this brought forth a furious denouncement in the Jewish press here. He never thinks of the fact that the Jews, during the period of inflation, had completely cleaned out the German people. He is a representative of that beer-table type of so-called better German citizens to which many academic occupations belong and who are known everywhere in the world as disagreeable people." Do you approve the fining in any amount by Adolf of the Jews or any portion of them or any one of them or the punishment of any one or more Jews other than the one who is charged and then only after conviction?

A. I do not. I think the guilty party should be fined.

Mr. Phelps: I object to that as cross examination of his own witness.

Mr. Rhodes: It isn't cross examination.

The Court: I don't think so.

Mr. Phelps: It doesn't offer an explanation of the statement.

The Court: Well, we are concerned in this trial necessarily with what the defendant thought. We must know his thoughts. That is the subject matter of the trial and he can give his own version of it.

[fol. 233] Mr. Phelps: I don't have any objection to that. I am objecting to the form in which this question was put, which is not asking for an explanation of it.

The Court: Overruled.

Mr. Rhodes: I asked whether or not he approved it, that is all. I don't—

The Court: (Interrupting) You would think it was a ghastly thing to do, wouldn't you?

A. It would be, I don't think anybody should be punished who is not guilty.

The Court: You didn't evidence your feeling about it in your diary, did you, that it was a ghastly thing to do, for Hitler to do?

A. I did not put that down, no, because foremost in my mind was not the fine, it was this man Mueller's behavior.

By Mr. Rhodes:

Q. You have not said that you approved the fine, you have failed to say that you were against it?

A. Yes.

Q. The subject here is Mueller?

A. Mueller is the subject, yes.

Q. Has that always been your attitude of mind in Germany and America and elsewhere?

A. That is my fundamental attitude of mind, that nobody should be punished for anybody else's crimes.

Q. Of course, no one could approve such a thing. Now, I would like to inquire where is the written statement [fol. 234] made by this defendant to the F. B. I. and signed by him after it was typed? I do not have it. I returned it to the F. B. I. It is not in evidence. I desire to offer it in evidence.

Mr. Milligan: Was it offered in evidence?

Mr. Rhodes: No, it was not. And it was returned to Mr. Menzie, I think, or one of the gentlemen here by me, or to Dick Phelps.

Mr. Phelps: No.

Mr. Rhodes: It was put on your table. I divested myself—

Mr. Phelps: (Interrupting) I am not certain, but I am sure all of the contents of it are in evidence and we have no objection to the document itself in evidence.

Mr. Rhodes: I am just looking for the document now.

Mr. Phelps: The last I saw of it counsel for the defendant had it in his possession and I haven't seen it since that time.

The Court: I think the same man got it who got my diary.

Mr. Rhodes: Will you make a search for it among your papers? I do not have it and I did put it on the table.

Mr. Milligan: We will send a man up and try to find it if you swear you haven't got it.

Mr. Rhodes: I don't have it. I have got a lot of papers but I do not have that.

By Mr. Rhodes:

Q. Mr. Baumgartner, you heard the witnesses on this stand as they have been placed here by the government. [fol. 235] I think perhaps I have covered all that they may have said, but I want to run through with you hurriedly, if I may, what those witnesses said as I have noted it. Mr. Trosper said that Adolf Hitler was a good man. He had secret service all over the world and were paid by the Nazi government and if they didn't perform then the bullets would be sent. He said that you belonged to the Bund. He said that you said you belonged to the Bund; that I think I have asked you.

Now, Mrs. Kramer then came on and said you were strong in praise of Adolf Hitler; that was in 1939, and the reason your family returned to Germany was because Mrs. Baumgartner was homesick, wanted to see the

condition of Germany; that if she found conditions as they thought, he, meaning you, would go back to Germany. That I think you have answered. That you, with her and her husband, made a trip to Park College, and coming back at dusk passed St. Luke's Hospital, apparently in the Holidays, and because the windows were decorated and she remarked about the beauty, you said something like this: "Hypocrites, all of them. They profess to be Christians and want peace and yet propagate war." Do you remember such a remark?

A. I don't remember that remark; sowehow I tried to explain it to myself, whether I could have made it or not. Christmas has always been for me a most wonderful day and I can't possibly think of having made such a nasty remark about Christmas.

Q. I don't know whether this was at Christmas. It [fol. 236] wasn't stated it was Christmas.

A. Was it candles?

Q. Candles or something.

A. I associated that remark with Christmas, but I don't recall that I ever made the remark.

Q. She further said that you said to the effect that we don't have freedom of speech here. We can't speak as we wish or we would lose our jobs.

A. Well, I don't know whether I made this remark. Conditionally, I might have made it under certain circumstances. After all, we practically cannot say what we want to say. I could not go up to my boss and call him names. He would probably fire me for it. I mean, naturally, that extreme freedom of speech exists nowhere, or it exists in a way that nobody would put me in jail for it, yes, that is true, but that was not meant, evidently.

Q. Well, you are being charged here, sought here to revoke your citizenship because you did speak your thoughts, is that what you mean?

A. I beg pardon?

Q. You spoke some thoughts and put them down in a diary and witness have quoted you about things. Now, they seek to revoke your citizenship. Has that anything to do with what you may have meant had you made such a remark as Mrs. Kramer says you made?

Mr. Phelps: Well, I think—

The Court: (Interrupting) Overruled.

A. Well, I don't think I made that remark.

By Mr. Rhodes:

Q. If you did, would that enter into your thoughts as [fol. 237] to why there was no freedom of speech?

A. No, certainly not.

Q. Now, Mr. Sherman testified—

A. (Interrupting) What is the name?

Q. Harry Sherman, who says that Carl said, meaning you, that Hitler had rejuvenated Germany and put the German people in their rightful place in the world. Did you make such a remark?

A. The words of Harry Sherman, I do not believe that I chose those words, but I may have said that Hitler apparently was responsible for putting Germany economically on its feet again, making it a respected nation or something of that sort.

Q. He says you further said that Germany was doing the right thing in invading Poland to protect it. And he said the same thing about Belgium, Czechoslovakia and Austria.

A. I do not believe, as I see it now, that I ever said anything about protecting Poland or protecting any other country. I do not believe I said that.

Q. What did you have in mind, what did you say?

A. I don't know. Of course, we were talking about the war and Poland. I may have spoken about certain territory that was taken away from Germany in 1918 or '19 in the peace treaty which I thought would better belong to Germany than to Poland. It was the Polish corridor and the City of Danzig that I very likely mentioned some way or other.

Q. Now, he says you said at the opening of the war that France wouldn't last six weeks, did you say that?

[fol. 238] A. I don't think I made that remark.

Q. It didn't last even six weeks once the German Army got under way.

A. After four weeks, I believe, but I don't think I made the remark.

Q. He says you said that the United States was a pawn for England; did you say that?

A. That the United States was—

Q. (Interrupting) Is a pawn for England?

A. I don't recall that I made that remark.

Q. He says you said that the Jews are trying to take over the industrial United States; did you say that?

A. I don't think I made that remark, taking over the industry of the United States.

Q. He says that you said we should not patronize Jewish persons. He says Hitler was right in running the Jews out of Germany, that you upheld what the German army was doing. Are those statements attributed to you correct?

A. I know exactly that I am in principle opposed to any kind of boycott of anybody and as far as Jews running out of Germany, I think that is largely a phraseology that was often heard by Harry, but surely not from me.

Q. As a matter of fact, many Americans have said the Jews ought to be run out of Germany.

A. It was a phrase that you could hear anywhere.

Q. I am not asking whether you subscribe to it, I am asking whether you know that was said?

[fol. 239] A. I did not make that remark to Harry Sherman.

Q. Do you subscribe to that idea?

A. No, I did not.

Q. Now, Mr. Heinrich says you called him a traitor to his country when he derided Hitler, did you?

A. No, I did not.

Q. Did you ever say as he says you said that the German government methods were better than the United States methods?

A. Not in those words. If I ever talked about the German government methods, if I ever did compare the German government and the American government, I probably had in mind the German government as I knew it. They have had the reputation of being very efficient. Under Frederick the Great they established that reputation of being a very, very efficient government, and,—well, we know that our government as we have it is not very efficient in the way of saving money and all that

kind of thing. Now, those comparisons may have been made, I don't think there is anything wrong with them.

Q. Well, they are purely abstract comparisons or academic comparisons, are they not?

A. Yes.

Q. Mr. McKenzie—I believe I asked you about the truck incident. He says two days after you came there your presence due to your talk created a disturbance. I believe you answered that, didn't you?

A. Yes.

Q. Mr. Bartley testified and said something about you asking him to ask Dr. North not to speak further in the [fol. 240] Church or at least protested against his speaking in church about international matters. Explain that, will you?

A. Well, I talked to Neil Bartley about the Germans who had political inducements; that did not mean I disapproved of Dr. North having a political opinion of any kind; that was not the idea. He could as well have a harsh opinion against Germany as anybody might, but I did not think, as I expressed in my letter to Dr. North and as I also think I expressed in my diary, that the Christian Church, which is a Church of Christianity, and all embracing phase of love, should be used to propagate or to advertise anything that had to do with war or speak favorably of anything that had to do with war.

Q. Did anyone ever complain to you while you were a Sunday School teacher there of what has been described as pro-Nazi or pro-German sympathies and so on or ask you to desist discussing anything about Germany?

A. I never received any complaints whatsoever by anybody. In fact, I repeatedly asked Neil Bartley, who at that time was Sunday School superintendent whether my method was right and he said "yes, Carl, it is all right, you just continue this way."

Q. Mr. Bartley says that you said that the Jews deserved their treatment for they caused Germany's distress.

A. Will you repeat that, please?

Q. I say, Mr. Bartley says that you said the Jews deserved their treatment, referring to Germany, I presume, for they—the Jews, caused Germany's distress?

A. Well, I don't remember that I made the statement. It has been, of course, often the subject of discussion, that during the inflation time in Germany in 1921, 1922 and 1923, a great number of immigrant Jews from Poland [fol. 241] took advantage of the German inflation time to buy with foreign money at a very low, ridiculous price considerable values in real estate. That has been mentioned by many people as a reason for anti-Jewish feeling in Germany. That is nothing, what I meant, or I probably just referred to that.

Q. Did you say they deserved their treatment?

A. Deserved their treatment? I don't think I did.

Q. Did you say they should be suppressed?

A. I could have probably explained it that way, why this was responsible for this effect, I did not think that I expressed emotionally anything about it. I don't think so.

Q. Did you ever say the Jews should be suppressed?

A. I never did.

Q. He says that you were well versed in Nazi propaganda in which you said "the end justified the means" and you said further "that force was the factor in the world."

A. I never made a statement of that kind that I would recognize force as the ultimate factor in the world. I believe in reason, I don't believe in force.

Q. What about the "end justifies the means"?

A. I don't believe in that principle because in my opinion it is [immoran].

Q. Now, Francis Marion Smith said your family was just as safe as they would be in the United States.

A. Well, that referred, I suppose, to the effect of war on them. At that time I very likely was of the opinion that they were as safe where they were at that time from the effect of the war as they would be here. That means [fol. 242] bombing and actual warfare.

Q. Did you have any thought that it was, generally speaking, safer to be in Germany than in the United States?

A. Generally speaking, it was not safer. It was less safe in Germany than in the United States because Germany was a belligerent country and was in the front of the war.

Q. Do you remember Mr. William F. Carpenter, who was a witness here? He says, as I have noted it, that in the fall of 1939 he conversed with you about your family and that he, Mr. Carpenter, brought up the conversation and he says that you said you wanted your children to be brought up in a German school. Did you say that?

A. No.

Q. Do you want them to be brought up in a German school?

A. No, I have no idea about it. A German school, as I remember them, they could have been brought up there just as well as in our schools over here.

Q. Well, during the course of history many hundreds of thousands have been brought up in German schools, Americans and others.

A. I don't know what the girls—

Q. (Interrupting) He said you said that your wife had an estate in Germany and wanted it settled up.

A. I don't know whether I mentioned that. That was more or less a known fact that I believe based on some statement of mine that my wife had possessions in Germany. About settling up, I don't know about settling up, I don't know anything about that.

Q. Well, has she in her own name any property?

A. Never did, it was simply property of her parents.

[fol. 243] Q. Her parents are still living.

A. So it is not her property.

Q. He accused you of being a spy, did he?

A. Well, this is now one of those many things that war brings with it. I have been hurt at first by denunciations of that kind and by ugly names, being called ugly names. Nobody can understand it as a man who came from a country with which this country is at war, how it feels when people come and call you a spy and a disloyal man. You want to be all right but they put you outside. They say you are not all right. Just because you come from that country you are not all right. That makes it awful hard to continue right. I did continue right because I evaluated all these things right. When I came back I sent some postal cards to my colleagues and when I came back I saw the postal cards standing there and I looked them over and I saw one, turned it around and saw the

word "spy" scribbled on it in big letters. That was only this summer.

Q. You have been called obscene or profane names, have you?

A. I have been called profane names, yes.

Q. Mr. Carrico says that in 1939 when Germany invaded Czechoslovakia that you said you were for Hitler 100 per cent and if the witness, that is, Carrico, knew what Hitler was like, he would also be for him 100 per cent, and wouldn't express thoughts contrary to Mr. Hitler's. Do you remember any such conversation?

A. I didn't remember this man's face when I saw him. Where did he come from and what was his employment?

Q. Carrico, 6822 Monroe, Kansas City, Ted Hill [fol. 244] Chevrolet Company.

A. Yes, Ted Hill Chevrolet Company. I remember he repaired my car, but I do not remember I talked politics with him. I was only out to get my car and talked about the car with him.

Q. Mr. Hawley, 7423 Holmes Street attributes to you the remark that Germany under Hitler is going places and Germany could handle matters better than America and further, you said, "What difference would it make to the American people if they were governed by England or by Germany?" Do you remember such a conversation with Mr. Hawley?

A. I had conversations with Mr. Hawley very seldom on politics. Mr. Hawley occasionally came into the laboratory in connection with the work for the underground department. We analyzed and inspected sheaths of underground cables for him and usually the conversations simply were about the work that was done there, and I only recall about two or three times that I talked to him about international politics. I think one time was at the beginning of the European war in 1939 and at the time we talked about the possibilities, what might happen in this world, especially in connection with Russia, would she side with Germany, and at another time I had a talk with Mr. Hawley in which he referred to my status as a citizen. Mr. Hawley made an impression on me because Mr. Hawley had been the Commander of the American Legion Post of the Kansas City Power and Light Company and, otherwise, I probably wouldn't have thought

about it, much about it, but he said in his opinion the naturalized citizen cannot claim to have the same right of speech, of speech or criticism or approval as the native citizen.

[fol. 245] Q. Why did he say that?

A. It was his feeling, it was his notion, and I disagreed with him.

Q. Well, now, what difference would it make to you whether you were governed by England or Germany?

A. I made this remark, I cannot possibly think how this country could be governed by England or Germany.

Q. Well, would you be willing that this country be governed by either one of them?

A. I would not be willing to have this country governed by anybody else except the people who lived in it.

Q. So, if you did say it, if it is correct, what difference would it make; you don't want anyone, do you?

A. No.

Q. Nobody else does. Mr. Seck, who testified, said that after your mother-in-law came here, but not before, he was a former neighbor of yours, you remember, after she came you praised the work of Hitler in bringing Germany back and that that went on by you to Mr. Seck until January 1, 1937, when they moved and no longer were your neighbor. Did you, did you praise the work of Hitler?

A. I may have approved of Hitler as people did, because he removed unemployment in Germany, which was the principal thing said in his favor and that he economically restored more order to Germany. I think that was done by many people. It was just a—general talk in those days.

Q. Did you justify Hitler's coming in, going into the Ruhr?

A. Well, I believe that Germany at that time had a right to go into the Ruhr because the Ruhr was, after all, German territory.

Q. Well, Alsace-Lorraine is said to be French Territory, too?

[fol. 246] A. Well, I think I mentioned this before, politically speaking, and from the European standpoint, I always believed that the dismemberment of Germany after the last war was the foundation for this war and for Hitlerism at that time.

Q. Well, Mr. Woodrow Wilson believed the same, did he not?

A. Mr. Woodrow Wilson disapproved of all these plans of Europe and dismemberment and realignment.

Q. Nor, Mr. Praschma, Count Praschma testified, said he had met you several times at Schwedler's. He said you were in favor of Hitler and, furthermore, he said you were against the United States because, he said you said, "The United States is full of hypocrites," and he says you are against the Jews. Now, what are the facts about your acquaintanceship and conversation with Mr. Praschma?

A. I met Count Praschma at one time at the home of Mr. Gus Schwedler. It must have been in the morning, it was after a New Year's celebration, and I don't think I spoke longer than 20 minutes, about ten minutes at Schwedler's, and then I took him home in my car. What I remember of the conversation was entirely confined to the man himself. I never met him before, but I have heard about him before as having been or being a member of the most exclusive families in Europe, and having come down to the status of a dishwasher and butler, so I talked to him about his employment and I believe that was all I talked to Praschma.

Q. Mr. Mueller, do you remember him?

A. Mr. Mueller, yes.

Q. He said that you were so disagreeable when you took him out to his hotel that he got out of the car and [fol. 247] would no longer ride with you. What were the facts as you know them.

A. I talked to Mr. Mueller in my car. We used to play cards at Gus Schwedler's home and he was one of the card players, and I used to take him home in my car to the hotel on 32nd and Troost. That took place many times. I don't exactly recall what we talked about when we were in my car but this, what he said, was entirely untrue. It was not true. Mr. Mueller developed a personal antagonism against me and I am inclined to think that whatever he said here was not right, it was just the product of his animosity against me.

Q. Now, Mr. Furr, who at one time was a neighbor of yours, says that he had discussions with you about governments generally, and you discussed, you, I mean, Baum-

gartner, discussed with him the laxness in America in getting things done, and pointed out in Germany it was otherwise, because there one man's word was the law; is that correct?

A. I might have made a remark of that kind, and we have made remarks in general about this thing in the same way in our newspapers in setting up certain, what we call "czars" in charge of a certain economic line. For instance, our rationing of rubber, and so on. In time of war doubtless delegating authority to one man to handle a thing according to his own judgment may have advantages. Of course, it may have disadvantages, if the man is unable to do it, but the system itself is quite often used advantageously. We are using it ourselves here.

Q. Well, if you did say that Germany was different because one man's word was the law, if you did say that, did you mean or do you now mean that you approve of that form of government?

[fol. 248] A. I don't. I don't in Germany and I don't here.

Q. It is a fact, as we all know, that in warfare when one man says the word it is much better than to have to have a political election over it.

A. I would not believe in doing away with the voice of the people in times of war. I think that is entirely wrong. I think the people should be heard.

Q. This witness says that you said that the Jewish people were creeping into our Courts and that we had no choice about the matter. Did you say that?

A. I actually believe I did not say that. I wouldn't know of any reason why I should talk about the Courts with anybody. I can't recall that at all. I don't think I did.

The Court: You made some reference in your diary to Mr. Justice Frankfurter, did you not?

A. Oh, you are right, your Honor, there may have been a talk about that. I didn't recall it at the time.

By Mr. Rhodes:

Q. Is there an entry in your diary about the Court?

A. I believe I remember, since the Judge mentioned it, I didn't remember it at the time.

Q. I will look it up in a moment. I missed it. Did you say that the British government was controlled by the Jews?

A. I don't know. I may have. I don't know whether I said it.

Q. Did you say that we were being led blindly into this war?

A. I don't know. I may have said it. I may not have said it.

Q. Well, that was in line with the belief of many people in the country, if you did say it, wasn't it?

A. I think it is.

[fol. 249] Q. Dr. Maybee, a dentist, said that you said to him, "You are pro-English just like I am pro-German, and I admire you for it." What did you mean by that, if you said it?

A. Well, all people coming from European stock have a certain emotional feeling for that stock and I think it is perfectly all right. I think it is a good thing that they have. I think they are part of these—they are able to do things better. I think if a Jew says, "I am a Jew," I respect him for that and if I say, "I am a German," I feel that I did right, if I said so, and so I think an Englishman does or any other nationality.

Q. When you say you are a German, do you mean by that that that carries with it the implication that you are wedded to and have adherence to the German government?

A. It has no political meaning whatsoever.

Q. Merely a racial statement?

A. It would be a racial statement.

Q. You made a speech out at the South Kansas City Business Men's Club or Southside Business Men's Association, which has been the subject of a good deal of comment through the witnesses. Mr. Hovey testified that you talked about the conditions in Germany and that you prefaced your statement by saying you implied no criticism of America or anyone else, and then said, among other things, the women and the children had butter under Hitler and they didn't have it before. Then you compared the virtues of one-man government as against ours and made no criticism of Germany. He says you heard nothing about the praise of Hitler or Germany; really made no criticism of Germany. What do you mean by the vir-

tues of the one-man government as compared against our forms of government?

[fol. 250] A. I don't recall my words, and I do not believe that I made any comparison of that kind. In general, I might say, however, this—because it reflects my opinion at this time, that I always believed that the people have a right to choose their own form of government. I do not believe that one and the same form of government under all conditions is right for all peoples. That does not mean that I would approve of the imposing of a form of government on the people against their will. I mean if they want to have a certain form of government I think it is the most democratic thing to let them have it, but I held also as a fundamental nation, that the European nations being more homogeneous in their whole structure, probably would rather—not rather, but it would be better explained if they would choose a form of government that is more a one-man government or a few-men government than as in the country of the United States with its rather heterogeneous structure It would be tragedy here, in my opinion, in this country if any one group of people would impose a government on the rest of our people which they, the group, would consider good for themselves but which would not be good for the rest of the people.

Q. Mr. John Starkey attended that luncheon and says that you said that the German government was a fine type of government because it got things done. Does that fit in with your explanation just now?

A. I didn't quite get that.

Q. You said that the government was a fine type of government because it got things done. Got things done, it accomplished things, it got action.

A. Well, I think I explained that before.

[fol. 251] Q. Well, all right. Mr. Spence, Louis Spence says that you said at a church dinner that you had heard Hitler and it was a wonderful speech. I believe you covered that. Mr. Hill of Hickman Mills attended that luncheon and said you spoke on the subject of Germany after the World War and spoke about inflation and Jews and other causes; and that Hitler had brought controlled prosperity to Germany, I believe, under Hitler the unemployment had ceased and everything was O. K. Was that the subject of your talk there?

A. I never said that everything was O. K. There would not have been—that would not have been at any time in accordance with the actual employment, but I think putting everybody to work, that complied with the facts.

Q. Mrs. Kramer was recalled and says that you said in 1939 or '40, that, "Germany is right and we are wrong in our form of government." Do you remember that?

A. I believe I explained before that I do not believe that one and the same form of government is the right form of government for all people, so I did not make that statement. Mrs. Kramer must have misunderstood me.

Q. Mrs. Seck says that you said at their home at dinner that Edity—that is your eldest child—had done an un-American thing, she had joined the German Youth Movement, and that you said it in a smug attitude which irked her. Do you remember that remark?

A. I do not remember the remark, but I remember that I talked about the fact that the oldest girl of my family joined the Youth Movement and as she herself wrote me, I have the impression that it was somewhat of the order of the Girl Scouts or Campfire Girls. She had been a [fol. 252] member of the Bluebirds here, the Bluebirds, I think they call them, that is the junior group of the Campfire Girls, and I had the impression that it was somewhat of the order of that movement here. I, of course, don't know what it is, but that was my impression. I have no jurisdiction over my children over there, I can't tell them what to do or what not to do.

Q. She says you said Hitler was a scholar and a follower of the great Bismarck.

A. I have heard it said that Hitler is an admirer of Bismarck and I read that here in the newspapers, that he had a big picture of Bismarck in his room.

Q. Did you say that to Mrs. Seck, is what I am trying to get at?

A. I don't remember that.

Q. Did you say, "We do not have a democracy, we have an oligarchy?" Mrs. Seck says you said that?

A. I don't think I made that plain statement. Maybe there was a discussion about what democracy means and how sometimes "democracy" is wrong interpreted or something of the sort, but I don't remember it.

Q. Do you remember Sergeant Richard Benne who was on the stand? A. Yes.

Q. Do you remember that he said under the Steuben Society set-up a committee of three must pass upon initially who may become a member, but that you set aside that provision and appointed yourself a committee to determine who should be a member of the Steuben Society?

A. That statement that Mr. Benne made was entirely false.

Q. Did you, as he said you did, want to bring aliens into the society?

[fol. 253] A. At no time. In fact, we have always very scrupulously investigated everyone who wanted to become a member, whether he was a citizen or not.

Q. Mr. J. I. Barton says that you said at a church dinner that Hitler was good for Germany and leading Germany in the right direction.

A. It must have been again the same thing as we discussed before, that Hitler has been made responsible for establishing order in a chaotic condition in Germany.

Q. That would be good for Germany in your opinion?

A. Therefore, it would be good for Germany.

Q. Does that mean that you approve of that form of government or that method of doing it?

A. Absolutely not. The form of government I think is not mentioned.

Q. No, it is not, I am asking you. Mr. Clarence Sloan was on the stand. Mr. Clarence Sloan evidently doesn't like you. Have you had any difficulty with him.

A. I had difficulties with Sloan. I don't know why, but Sloan is known in the place where I work as a man who is antagonistic to me. I don't know why.

Q. To you?

A. Yes, he has played practical jokes on me and things of that sort. Well, anyhow, I can't give the explanation, but he doesn't like me.

Q. He said that you said in referring to President Roosevelt, "that son-of-a-bitch is leading us into war." Did you say that?

A. I do not believe that I ever used that word for the President.

The Court: I didn't hear that sub-rosa remark.

[fol. 254] Mr. Rhodes: I said—I expect I had better not be doing any testifying at this time. I remember for a time, if your Honor please, it was a common thing to to say that so-and-so did so-and-so, nobody every asked who they meant. His name was never mentioned.

By Mr. Rhodes:

Q. Mr. Sloan says that at the fall of Dunkirk you came into the office with a jubiliant air and said, "Today I am rejoicing." Is that correct?

A. No.

Q. He says that you said upon being given an assignment to test some copper or lead or something which you had been told was going to the Lake City plant, you said, "This is God damn foolishness to build all these plants, wasting money and so on when there are so many out of employment." Did you say that?

A. I never said that.

Q. Ackerstrom—do you remember this Swedish extraction man, a citizen? A. Yes.

Q. In 1937 he says you said in response or in connection with some headlines in the press at that time, Hitler was the best leader Germany ever had and that he asked you why you didn't return to Germany if you felt that way, and you said that you couldn't go back because someone would recognize you and turn you in since you were a former German officer. Did you say that?

A. I don't understand quite the sense of this deposition.

Q. He asked you why you didn't return to Germany if you talked that, and you said you could not.

A. I didn't make the statement, but I just wondered how it would be understood. I didn't make the statement.

Q. Well, you were there after you were a German of [fol. 255] ficer from 1919 to 1927, weren't you, and weren't turned in then, were you?

A. I was a German officer in the war.

Q. That is right? A. And what is it?

Q. I say, you were there from 1919 to 1927 as a former German officer? A. Yes.

Q. You weren't "turned in" whatever that means, at that time, were you? A. No, I was not.

Q. Mr. Yonts, out on Paseo, says you gave praise to Germany and to Hitler, coming from poverty to riches—that is, the country coming from poverty to riches—says that Germany was justified in the aggression to neighboring countries to regain territory lost in the World War.

A. Who is Mr. Yonts?

Q. Mr. Yonts lives at 3445 Paseo, five years, formerly Nevada, Missouri, but in the mortgage loan business here. He heard you at the Southside Business Men's Club. He doesn't know you, but in that talk you praised Germany and Hitler on the ground that Hitler had brought Germany from poverty to riches and said that Germany was justified in the aggression of the neighboring countries to regain the territory lost in the World War. Did you say those two things?

A. I didn't say those words, but I talked before on the speech I made. I did not praise Hitler at any time. I, of course, as I said before, thought that certain parts of the former Germany should never have been taken away from Germany, and I explained before that I considered that for the cause of this war.

Q. Do you remember Mr. Elwood Hobbs of Mission, Kansas? He says you made a speech in October of 1938 and that afterwards in conversation you said that Ger- [fol. 256] many had made progress under Hitler, who was a good man, and that you said you would enjoy living under that form of government. Did you say that?

A. I never said that.

Q. He says he said, "Why don't you live under it," and you said, "I am an American citizen." Do you remember that?

A. No, I don't recall this conversation at all. In fact, I don't recall the man. What occupation was that?

Q. Mr. Fairchild, C. C. Fairchild, a teacher, says that at church you had said that you favored Hitler and thought Hitler was right and favored the Austrian putsch in the fall of 1938. Did you say that?

A. I didn't think I made the statement to Mr. Fairchild.

Q. And he says you further said when he saw you at an A. & P. store at 63rd Street that your wife and family were in Germany during the war and they were receiving good treatment.

A. Well, I may have said it. I don't remember. I remember that we talked about my family in those few minutes we talked together, and Mr. Fairchild was concerned about the fate of my family and I said, "I think they are all right, according to what they write me."

Q. Mr. Lee Bell of Merriam, Kansas, says that you said in a speech at the Cooperative Club at Overland Park that you were an ardent admirer of Hitler and in sympathy with his policies, and would be glad to live under Hitler's regime. Did you say that?

A. I never said that.

Q. I have asked you about the circumstances of the finding of your diary, haven't I? A. Yes.

Q. You heard Mr. Menzie, the F. B. I. agent testify? [fol. 257] A. Yes.

Q. Did you draw his attention to the fact that those two booklets were diaries kept by you? A. I did.

Q. Had he discovered that fact prior to the time that you notified him of that fact?

A. It was not my impression.

Q. That was not your impression?

A. I believe I said to Mr. Menzie, "Why, here, you have discovered something very interesting, this is a diary of mine in the German language, that surely must look suspicious to you," and then Mr. Menzie said, "I think I will take this along."

Q. There is a man over here in North Kansas City, I have forgotten his name, I seem to have skipped him, whom you solicited to become a member of the Steuben Society who said that he didn't want to become a member of the Steuben and you called him a Schweinhund. Did you call him that?

A. I never called him that.

Q. You say you never called him that?

A. I never called him any names. I had my opinion about him, but *I* didn't call him any names.

Q. Does that imply that he is that although you didn't call him that.

A. I don't know. Maybe he felt that way himself, but I didn't call him that.

Q. Did you have any word with him?

A. Oh, no quarrel of any kind."

[fol. 258] Upon cross-examination, the witness stated further:

Q. Mr. Baumgartner, I will make the cross-examination as brief as possible. As I understand, in answer to your counsel, you deny all of the statements that have been made against you by the witnesses who have taken the witness stand on the part of the Government.

A. I didn't deny all of them, I tried to explain some of them.

Q. All right, now, which ones? You denied most of them.

A. That I don't recall.

Q. Tell me the ones that you don't deny.

Mr. Rhodes: If your Honor please, there are hundreds of names and to say which he denies—Judge Milligan has been sitting here for two hours [listinging] to me examining.

The Court: The question is a proper one, I think. Overruled. The question is, Mr. Baumgartner, if there was any statement made against you by a witness, any adverse statement which you do not deny. Judge Milligan's question is, "What was that statement?"

A. Well, in general, the statements made by the witnesses that I associated with, the recovery of Germany with the person of Hitler, I admit those testimonies. I was always of the opinion that somehow Hitler had something to do with the recovery of Germany from a chaotic condition in 1932 and up to 1932. All of those statements, I think are in substance and in a general way true.

By Mr. Milligan:

Q. In other words, you admit that, but you deny all other statements that any witness has testified adversely against you?

[fol. 259] A. I don't remember any other statements. They would have to be quoted to me.

Q. You have heard thirty or forty witnesses testify against you?

A. That is the reason I don't remember any of their statements. I know I heard all the testimony of the wit-

nesses, but I couldn't possibly remember them for that very reason.

Q. Well, your attorney just called attention to them.

Mr. Rhodes: If Your Honor please, here is a witness who has been on this stand for two hours this morning and I have gone over every statement that I could find, I made a note of the witnesses and he answered them one way or the other, and Judge Milligan says, "What statements do you admit?" Now, that is a proper question, but how can that be answered?

The Court: Well, wouldn't it be fair to say that the witness has endeavored to explain all of the adverse statements excepting those adverse statements which he denies having made? Isn't that fair?

Mr. Rhodes: That is right. That answers Judge Milligan's question. I don't know how anybody could sit there and say, "Which ones do you agree and not agree on?"

Mr. Milligan: In other words, you have denied and branded as false every statement that has been made by witnesses on the witness stand against your interest?

Mr. Rhodes: Oh, I object to that as being argumentative and not cross-examination.

The Court: Overruled.

A. Against what?

By Mr. Milligan:

Q. Against your interest in this case?

[fol. 260] A. Against my interest in this case?

Q. Yes, sir.

A. That means that I deny that there was anything, that anything was true, that could possibly indicate that I would not be entitled to my citizenship, is that your meaning?

Q. Well, you can put any construction on it you want to. The question is very clear.

A. I have to know the sense of it.

Q. You understand what a statement is that is against your interest in this case, don't you?

A. Well, I don't know just what statements would be interpreted as being detrimental to my cause, I don't know that, Mr. District Attorney, so I can't answer the question.

Q. So that is your answer. I hand you Government's Exhibits 7 and 8 and ask you to tell the Court what these documents are.

A. This is a diary or diaries which were written by myself starting according to page one, December 1, 1938, until according to this book, July '41, July 9, '41.

Q. Did you keep that diary? A. I did.

Q. Is that in your handwriting?

A. That is my handwriting.

Q. Was it the diary of events that you depicted of the various days from December, 1938 to June, 1941?

A. It was a diary of events and was a diary of feelings and emotions that were brought about by certain events of that time.

Q. Between December, 1938 and June, 1941 or July, 1941? A. What the dates say, yes.

Q. That is a period of three and a half years, isn't it?

A. From '39 to '41, no, is it—from December, 1938—[fol. 261] well, 1939, 1941, two and a half years.

Q. Two and a half years?

A. Probably with certain small interruptions in there.

Q. Which is the last?

A. I think this is the last one (indicating). This is the last one.

Q. It is in two volumes?

A. Two books, yes; this is the last one, it seems.

Q. What is the last notation in there, what date?

A. July 9, '41.

Q. Now, these are in two volumes, these exhibits are in two volumes? A. Yes.

Q. What is the other one, the third one?

A. Which other one?

Q. The other one that you kept?

A. I discontinued the diary as far as I remember.

Q. Why did you? Now, wait a minute, you say as far as you remember?

A. Yes, I mean I discontinued, as far as I remember—first, as to the reason, I don't know the reason why I discontinued the diary.

Q. You don't know positively whether you discontinued it or not?

A. I did discontinue, but I don't know the reason why I did it.

Q. Have you another volume of that diary in any form?
A. I don't.
Q. Sir?— A. I don't.
Q. Are you positive about that?
[fol. 262] A. Let me see, I had some few entries recently in a book, I think, for a few days, but I discontinued that again.
Q. When did you make those entries?
A. I think those entries were made after I was investigated by the F. B. I., as far as I remember.
Q. Did you make any other entries before you were investigated by the F. B. I. from June or July, 1941?
A. I don't think so.
Q. Well, now, listen. Your memory is good, isn't it.
A. My memory is good to a certain extent, not beyond that.
Q. You remembered on the witness stand that you didn't make all these various statements of witnesses, the testimony of witnesses for the past two days, and you don't know whether you kept another diary or not, is that what you mean to tell this Court?
A. I know, Mr. District Attorney, I didn't remember most of what the witnesses said. In fact, I hardly remember anything what the witnesses said, I just tried to explain in my opinion now whether I was able to answer the questions. I—

The Court: (Interrupting) The question which he is now asking you, Mr. Baumgartner, is not about that, but the question is, did you keep another diary than the ones that have been offered in evidence?

A. I did not.

By Mr. Milligan:
Q. Now, you do remember then that you did not?
A. I said in one book a few entries.
Q. After you were investigated?
A. After I was investigated, I believe it was after that.
[fol. 263] Mr. Rhodes: Now, let the witness answer. He hasn't finished answering yet.

Mr. Milligan: I certainly will. You can take all the time you want to answer.

A. No, I didn't.

By Mr. Milligan:

Q. In other words, you stated a while ago on your oath that you didn't remember whether you kept a diary of events? A. I didn't say that.

Q. Before the investigation of the F. B. I.?

A. I didn't say I didn't remember. I said I didn't remember any reason why I discontinued this diary.

Q. Oh, that is what you meant when you said you didn't.

A. My answer is the same as it was before.

Q. You understood me a while ago, didn't you?

A. Yes.

Q. That I wanted to know if you had another diary and another volume of this diary?

A. I said, "I didn't."

Q. Why did you keep that diary?

A. I stated a reason in this first volume of the diary, that I wanted to make an experiment with myself, I stopped smoking, I believe I read in it, and I wanted to see whether I could also continue keeping a diary; that is what the diary says, I read that.

Q. In other words, that was the purpose of you keeping a diary of all of the events that happened for two years and a half showing your emotions and everything, was on account of the fact that you quit smoking. Is that what you tell?

[fol. 264] A. No, Mr. District Attorney, I just mentioned to you what I read in the diary. I am ready to add to this that I later on—and I said this before—that later on I continued the diary, not because of that experiment, but because I wanted to see how these events, the gigantic events of the world would affect my emotional life, and perhaps later on, after all is over, I would be able to read this and find how I thought about it.

Mr. Rhodes: Wait a minute, you are interrupting the witness.

A. I also—

Mr. Milligan: I beg your pardon and also the pardon of the attorney.

A. (Continuing) I also, for the same reason, kept front pages, not certain articles, but front pages of our daily newspapers to see what I would think about those front

pages after these times would be remote, would be passed. I have those front pages.

Q. So it really was not on account of you quitting smoking that you started keeping a diary?

A. No, but that I put down in my diary—

Q. (Interrupting) Sure you did. You only mentioned the ones—are you still abstaining from smoking?

A. I don't say that that is the reason, I said I mentioned that as a reason when I started out.

Q. Now, are you still abstaining from the use of tobacco? A. I am still abstaining.

Q. And you did during this two years and a half?

A. You mean abstaining from the use of tobacco smoking? I developed a habit of not smoking any more, I am glad I am rid of it.

[fol. 265] Q. For two years and a half you didn't consider it important to mention it in your diary? The only time it is mentioned is on the front page.

A. Why should I have mentioned it? I mentioned it once.

Q. That was one of the reasons you started a diary, was because you [quite] smoking?

A. Yes, but what reason could I have had to put that fact again and again into the diary? "I stopped smoking, I stopped smoking," it wouldn't make sense.

Q. Well, why didn't you stop keeping the diary after you [quite] smoking? A. I beg your pardon?

Q. Why didn't you stop the diary after you had ceased smoking?

A. Well, I don't see the parallel between not smoking or keeping a diary. At the time I started out, you see, Mr. District Attorney, I started a diary once a long time ago, in 1920 or 1921, it was, and I put into that diary certain things, emotional things, very emotional things.

Q. In 1920, '20 or '21. How long did you keep that diary up?

A. I kept that diary for, I would say, about two or three months, and then discontinued the diary.

Q. Where were you living at that time?

A. At that time I was living in my home in Germany.

Q. You kept a diary for two or three months?

A. Yes, but it was a diary of a different character, because I was at a different age at that time, and when I

again read that diary about fifteen years later, I thought what a fool I had been at that time.

Q. And you destroyed it? A. I didn't.

Q. What did you do with it? A. I didn't.

[fol. 266] Q. Have you put it in your home?

A. I have the diary.

Q. You have the diary? A. Yes, but it does—

Q. (Interrupting) In other words, you figured you were a fool for keeping a diary in Germany in 1920?

Mr. Rhodes: I object to that as being contrary to what the witness said.

A. No.

The Court: The objection is sustained; that isn't what the witness said at all. He said when he read the diary over years afterwards he concluded that he had been foolish at that time, not for keeping the diary, but what he was at that time.

By Mr. Milligan:

Q. Well, I misunderstood him, and I don't mean—what was the reason?

A. Well, we have all in our lives emotional periods that we do not like to talk about in public, and that mostly was considered—I mean, was the subject of those entries in my diary.

Q. Did you mean afterward when you read it over and became older and more mature, then you thought the subject of your diary was foolish, is that what you meant?

A. I meant at that time I was rather a foolish—I, as a person, was rather foolish because of my actions and my ways of thinking.

Q. In other words, when you re-read it as a cold record. What do you think about this diary? Have you, since the Government obtained this and translated it—what are your emotions now looking coldly upon it as a record? Do you also feel that it was a little foolish and [fol. 267] your thoughts were a little foolish in that diary?

A. Let me answer the question completely as well as I can.

Q. Go right ahead, take all the time you want.

A. I have since—at the time that the F. B. I. found these diaries, it was the first time since I finished them

that I again looked at what I wrote, and then when Mr. Menzie asked me to translate one passage for him, that was the first time after a period of about two years that I again read anything in this diary. Now, of course, I have read the translation which is of passages which have something to do with the complaint of the Government. I haven't read the complete diary yet, but I did not virtually—still at the same time and under the same circumstances—not quite. We are still in this war. In other words, in this epoch of world disturbances, we are still in it, but I would say that after two or three years of development, I look today—not because the Government found these things, but quite objectively, I look at many of these entries I made as rather foolish. Rather foolish. I mean because they were emotional, because they got away from reason. That was the thing, but still I would like to have more time, another ten years or so to be able to judge just in what frame of mind I was in at the time when I wrote this diary.

Q. Well, and especially you would be in that frame of mind due to the fact this case arose and this diary has been made a public document in a Court.

Mr. Rhodes: I object to that, if your Honor please, as purely argumentative.

A. No, I told you it wasn't because of the use of this diary at all, just purely objective.

[fol. 268] The Court: The question has answered it. The objection is overruled.

A. I—

By Mr. Milligan:

Q. Go ahead, make any further explanation.

A. Well, as I said, I don't agree with you, Mr. District Attorney, because—

Q. (Interrupting) I am satisfied you don't.

A. (Continuing)—that in my judgment of the diary, the use of it in Court had nothing to do with this answer I just gave you, not a bit. In that respect, I want to add it is very embarrassing to have a diary published, any diary that is not meant, not written for publication, just as if I would be able to take out of your head your thoughts

which you think from morning until night and throw them before the public. Mr. District Attorney, you would probably not be the district attorney.

Q. In other words, this has been a source of embarrassment to you?

A. Any diary that is not written for publication contains certain emotional things which we hide our emotions from people, that is just human nature and if they are thrown before the public, it is embarrassing any time. If I write into a book that I loved a girl and I felt in a certain way about this girl and somebody comes and takes this leaf out of my diary and puts it on the front of the newspapers, I feel bad about it. That is what I mean.

Q. And especially this diary is embarrassing to you because you as a naturalized citizen through the whole of the diary were praising the country that you swore in Court to abjure and to foresake and criticizing all through [fol. 269] the pages of this diary the very government that you took an oath in Court to sustain and uphold. It is very embarrassing from that standpoint, isn't it?

A. No, that is not it. I told you why it is embarrassing to have a diary published.

Q. Well, I am asking you if it isn't very embarrassing for the additional reason that I have just mentioned?

A. For the additional reason you just have mentioned?

Q. Yes.

A. Well, no, I think a diary cannot be taken very well in Court as evidence.

Q. You think what?

A. It cannot be used very well as evidence like an account being taken or like a statement or a letter. When we think about things from morning until night we think very often very incompletely about things. We have certain ideas and certain emotions that make us think about our best friends even, what a dirty fellow he is, then the following day if we have made that statement to somebody or had written it in a letter to somebody, we would very much repent it, not because we were friendly to the friend but because we feel we were wrong. We did not know the facts that induced us to write this remark or make this remark to somebody. For that reason, I think that a diary is a rather weak thing to prove

a point with because all the thoughts and ideas in there excepting where they refer to' events which happened are purely the cold events, or where they concern—well, it would be an event about movement of a person, I went to this house or that house, or I went to sleep at such and such a time, but wherever there are ideas and reflections, there was—they are simply dictated by some emotions, [fol. 270] sometimes by reason, but most of the time by emotions, that is the reason we sit down and write it, something impels you to do it. It is mostly an emotion that does it. Well, emotions are those things that compel us to act and to think and act wrongly occasionally, unless they have themselves under power of control, but we do those things every day. Our mind is a continuous diary. If we would punish somebody for what he puts in a diary, we just as well turn round and say, "Boy, you are guilty, you have been thinking the wrong things all the way, we condemn you."

Q. In other words, you don't think this diary ought to be admissible in Court and you didn't think it was admissible in Court while you were writing it either, did you? Isn't that right?

A. Well, that angle never entered my thoughts. It didn't even enter my thoughts when Mr. Menzie took the diary. I told him, "Why, here is something interesting, and Mr. Menzie, I would like to have it back again after you read it, please give it back to me again."

Q. But you didn't know it would be admissible in Court, you thought it would not?

A. Yes, I think if I thought at all about it, I thought not.

Q. You didn't think this diary could ever show up in a courtroom to condemn you, did you?

A. No, I didn't.

Q. No, you didn't?

A. No, I didn't.

Mr. Rhodes: Well, did you think it would condemn you?

Mr. Milligan: Well, now, I object.

Mr. Rhodes: Well, all right.

[fol. 271] Mr. Milligan: I want to cross-examine the witness myself. He can take him for redirect examination.

By Mr. Milligan:

Q. Where is the other copy of this diary?

A. There is none.

Q. I mean the other volume?

A. There is none. There is no other copy.

Q. Now, you put this diary down, these emotions of yours. Let me tell you, for two and a half years, because it was most interesting times, it was something occurring internationally, nationally, that is right, isn't it?

A. Yes, yes.

Q. That is the reason you were putting down all of these statements in this diary? A. You would.

Q. Now, did the world stop on July, 1941, nothing happen after that, internationally and nationally, or in your life, everything stopped then in July, 1941, did it?

A. In my diary it did, as well as I remember.

Q. Well, now, wait a minute. You don't remember whether you kept another diary or not?

Mr. Rhodes: Oh, your Honor, please—

Mr. Milligan: (Interrupting) I think that is—

Mr. Rhodes: (Continuing) The United States attorney is putting words in this witness' mouth that he hasn't said.

The Court: The questions are proper but it is not proper to ask the same question twice.

Mr. Milligan: Well, he keeps giving another answer.

Mr. Rhodes: He has already said there is no other answer.

[fol. 272] The Court: Let's get through with it, did you keep any other diary before your investigation or not?

A. The two diaries.

Mr. Rhodes: Wait a minute.

A. Let me think about it.

Mr. Rhodes: If you Honor please, the United States attorney hasn't given him a chance to answer your question.

Mr. Milligan: I am going to give him plenty of time to answer.

Mr. Rhodes: Do so then and we will get forward.

Mr. Milligan: That is what I am trying to find out.

A. This was, now, when was it discontinued?

By Mr. Milligan:

Q. Here, I will let you have the diary, and you tell me.

A. I know one thing, that I discontinued the diary. Mr. District Attorney, when I saw these two books at that time I didn't even know I had two books. That is a fact. I didn't know I had two books and then I saw two books, but I do not believe I continued this diary any further.

Q. Well, now, as a matter of fact—

A. (Interrupting) In fact, I did not continue the diary up to the time at all when I was investigated.

Q. Now, Mr. Baumgartner, in this diary the last notation you have is July 4, 1941—I mean July 9, isn't it or—that is German, what is it?

A. That is July 9, '41.

Q. All right, '41; now, that completed that book, didn't it? In other words? A. Yes.

Q. This diary, this book is filled up, you couldn't have [fol. 273] written another? A. Another page?

Q. Another page? A. I know that is through.

Q. Now, have you got another?

A. I haven't got—

Q. (Interrupting) Another book of this kind or any other kind with a diary in it, that is a continuation?

A. I don't really recall whether I did that, but I might go to my room and find out.

Q. In other words—pardon me, I didn't mean to interrupt.

A. I might go through my drawers again, which I haven't done since that time, and find out, maybe there is a few more pages, I don't really know, I did not continue the diary, however, up to the present time.

Q. In other words, you might have another book like that? A. I don't know whether I have or not.

Q. Why are you positive that you didn't continue it up to the present time?

A. I didn't know—I didn't even know until I read the affidavit when I had my affidavit, from when to when. I don't know. I don't know, I put it away.

Q. Well, now, as I understand it, you are not positive, you may have another diary or a similar book of this kind which may have many pages in it?

Mr. Rhodes: I object to that, your Honor. This is repetition after repetition.

The Court: Well, but the witness hasn't been positive about it.

A. I don't know.

[fol. 274] By Mr. Milligan:

Q. In other words, you may?

A. But one thing I am sure about, Mr. District Attorney, one thing, that I discontinued it a long time ago.

Q. Why are you so sure about that? When did you discontinue keeping the diary?

A. I don't know.

Q. Was it at the time the F. B. I. started investigating you? A. No, it was before.

Q. How long before? A. I don't know.

Q. Well, give the Court some idea about it. Was it a couple of weeks before?

A. I don't know. Let me see, what I did at that time, in that summer of 1941, maybe that will be helpful. It was in July.

Q. That is right.

A. 1941. And what did I do that summer?

Mr. Rhodes: You went to the Northwest, you spent some time with Dr. Bard.

Mr. Milligan: I object to Mr. Rhodes testifying.

The Court: Sustained.

Mr. Rhodes: No, I am not testifying.

A. He wants to help me to find out where I was. I believe I made a trip.

By Mr. Milligan:

Q. I would think you would know where you were in 1941 better than Mr. Rhodes.

A. I think I went—in 1941, yes, I know where I was. I went to Murphysboro, Illinois. Once when I was in Murphysboro I know I made diary entries, but I was there the year before that too, and I couldn't say whether it was at that time that I made diary entries or in 1941.

Q. But you do know you went there in 1941?

A. 1941, yes.

[fol. 275] Q. Did you go there in 1942?

A. No, that was this year, no, I didn't go there in 1942.

Q. In what book did you keep those notations from your diary when you were in Murphysboro?

A. I don't know. I made some notes there at that time, but it is only now at this time that the idea occurs to me there was another book.

Q. Well, now, Mr. Baumgartner, I want to ask you this— A. Yes.

Q. Will you search your quarters, your drawers as you expressed it? A. Absolutely.

Q. And bring over, if you have any other diary?

A. If I have any other diary I can honestly promise you to give it to you here.

Q. During the noon hour here. I don't mean after the case is over, I mean during the noon hour. It is 12:10 now. Is the Court going to adjourn?

The Court: Going to adjourn at 12:30 and reconvene at 1:30.

A. Yes, I will go out if you want me to, I will go out and see. I thought you would perhaps say I don't tell you the truth, in that case, why doesn't somebody come along with me.

Mr. Rhodes: Why not have the F. B. I. go out with him? Let them search his room.

Mr. Milligan: You said that you may have another diary over there, didn't you, in answer to the question?

Mr. Rhodes: I object, I object to that.

A. I don't think I have, and you just called my attention and made reference that I made entries, in former testimony, but I am not sure whether I made the [entreis] in 1940 or 1941. If I made them in '41, I think I spent my vacation in August there. If I am right, why, this

[fol. 276] book ends at July 9, 1941. That is before that time, so if I did make the entries in 1941 there would be another book but I don't remember.

By Mr. Milligan:

Q. Because you couldn't put any other entries in either one of these books, isn't that right.

A. That is right.

Q. They are both filled up?

A. Except this first one has one page missing. Yes, there are some pages in here.

Q. That is the first one?

A. I don't remember, but if you want me to go out you can send somebody with me and we will go to my room.

Q. What do you think, do you think you have another diary in your room?

A. [Id] I do, because I just don't remember it then, because I discontinued it and forgot about it.

Q. In other words, your best recollection is that you kept no diary after this? A. After this.

Q. July, 1941?

A. Of course, these books here, I could have an explanation for it, in the simple way that I tried to get another book, which I didn't have, maybe, at the time that I wanted to make the entry and failed to buy one for some time and then gave up. That is just thinking, now, I don't know whether that is a reason or not. Well, I will do this, Mr. District Attorney, you give me a man, we will go out to my house and see whether there is any other book in there.

Q. As a matter of fact, you know whether there is a book out there?

A. I don't believe there is one. That is the reason I said "No."

Q. You kept the diary from then on, you would have included in it during the time after Pearl Harbor, would you not?

A. If I had continued it, up to date, I doubtless would have continued writing until now.

[fol. 277] Q. No, take on the assumption that you don't have any further diary, why did you stop keeping a diary, can you explain that to the Court?

A. Well, these things we do, things that are not very easily explained in our lives—we start drinking and we stop drinking, we start smoking and we stop smoking—why, I just have no rational explanation for that excepting that I stopped it. We do so many things we cannot very well explain, we go places on the spur of the moment, we do things on the spur of the moment, and I cannot offer an explanation, but just having done it, well, without any reason, without any further reason whatsoever, excepting I didn't want to have it any more. I stopped my diary in 1922 or '21, I stopped that after three or four months. At that time it was three or four months, this time it was two and a half years.

Q. So that is your only explanation?

A. I heard the man telling me, one of the fellow employees with whom I talked, he was up at the witness stand, Mr. Bartley, he said, "About seven or eight years ago I had a diary which I had conducted in—two years, 1925 or so, for two or more years, he told, and then I decided to do away with this diary and I burned it up because it was foolish to have a diary in my opinion and all of a sudden I thought it was foolish."

Q. I will ask you again why did you keep this diary?

A. I told you. (Tr. 434)

Q. What purpose did you intend to make of it, the keeping of the diary?

A. I told you at the outset I started—I don't think you doubt that reason, you don't think that I at that time [fol. 278] when I put the reason in, the day, No. 1, that I started a diary, to see whether I could keep up with it, but simply a matter of willpower or something. You don't think I put that in purposely to mislead you after so many years to think that I started the diary for some other reason? You don't think that? I couldn't possibly.

Q. Yes, I do, I think you had another reason, to be frank with you.

A. You think I put that reason in on purpose to mislead anybody who would find it?

Q. I don't know about that, that would be a good reason to put it in.

The Court: Well, the question is, what was the reason that you started the diary? It has been asked you once or twice before. You can answer it once more.

A. I started the diary in the first place because I simply wanted to have a diary and later on to have my impressions for much later, years after, during these hectic times we are going through.

Q. That is right.

A. And I have the same, I have a bundle of newspapers, front pages, I discontinued.

Q. Let's keep on the diary.

A. I discontinued that too, for what reason, I don't know, just because I was tired (Tr. 435) of it.

Q. In other words, you intended to use this diary and to keep it in years to come for what purpose?

A. To know just perhaps how foolish I was during these years and how unreasonable my ideas and emotions were during these years.

Q. Well, you found that out when you kept one in Germany in 1920, how foolish it was?

A. But these were not the same conditions, they were [fol. 279] different. I knew it at that time, at the time I knew it very well, and it is an interesting experience, Mr. District Attorney, to do this thing, to keep a diary even if you had done it once, it is so much more interesting because you know then what value a diary has.

Q. In other words, it took you about 20 years from your first experience to appreciate it?

A. The value of a diary?

Q. The value of the diary.

A. No, that is not—that is not implied there. I probably knew that long beforehand. I suppose that I read my diary of 1920-21, maybe four or five years after that and I knew it then, but all of a sudden I had the notion to again have a diary, especially spurred by the colossal events going on in the world. When I was over at the office the other day you told me about finding some letters "h. c." in my diary and I couldn't possibly think what they meant. Only they were letters and figures, were something in there. I couldn't remember.

Q. "H. c." and "e. f."

A. Then we found out and (Tr. 436) your man had found out before or before I told him, though, what it was. The figure meant my weight. I had found that out

myself, too, by trying to remember, but I was told you had found it out. Well, "h. c.," you hadn't found out, but before I heard what that meant, I remembered that I put in those letters as a means to find out how often I had my hair cut. Hair cut, "h. c."

Q. That is the only explanation you made of that?

A. Absolutely, that is the explanation.

Q. According to your diary you didn't get—a period of one year—

A. (Interrupting) I beg your pardon. I wanted [fol. 280] to know at one time what time elapsed between haircuts and so I put in for three or four haircuts, I put in "h. c." Not at any other time before, not at any time afterwards, simply as a record there to see. It was foolish, I admit that. We do foolish things apparently, at least I do, and I put in "h. c." to find that out, and I found then by looking over the translation there that I think there was a space of about four weeks before I had my hair cut. Now, these things are foolish.

Q. There is a space there that according to your diary you didn't get a haircut?

A. Very true, because I didn't make the "h. c." after it.

Q. Have you ever been able to make any explanation of the "e. f.'s"?

A. "E. F.", what it was, I haven't (Tr. 437) thought about that. I have talked to Mr. Rhodes about it and I have thought about it and I just simply don't remember.

Q. Did he find any explanation of it?

A. I haven't.

Q. You haven't?

A. I suppose since "e. f." and "w"., 193" means my weight, I would say that "e. f." must mean something that pertains to my way of living, mode of living, somehow, but I do not remember what it means.

Q. Well, it is in there several times, isn't it?

A. I know, but I couldn't tell you if you put me on the rack, I couldn't tell you.

Q. Look at the diary, now.

A. I believe it. I think you showed it to me. I believe it is in there, but I don't remember.

Q. And you haven't been able to yet offer any explanation?

A. In fact, I admit since we talked about it and a little while afterwards, I didn't think about it. I didn't con-
[fol. 281] tinue to think about the letters "e. f." in my diary because—I didn't continue to pay any attention, it doesn't mean anything material. I don't think it would have any value.

Q. Well, it might be valuable.

A. I haven't even been thinking of it.

Q. Even to this day you can't tell the Court what you meant by that "e. f." although it is used a number of times?

A. I don't know. Not even—I didn't pay much attention to it—was simply—I tried for some time to remember what it was, but I can't.

Q. Your explanation when you looked at the diary the other day when we called your attention to it was that you were recording the times you got a haircut?

A. Yes.

Q. And the diary does show according to that you didn't get a haircut for a period of a year?

A. Or I didn't make an entry. It doesn't mean—that entry means I got a haircut. I may not have made the entry after I got the haircut but it doesn't mean I would have walked around like a bushman.

Q. What would be the purpose of you putting "h. c." and then a year afterwards putting the letters "h. c."?

A. Oh, I did do that? I don't think I did that.

Q. Well, I think your did.

A. No, I don't think I did that. I don't believe I did that, Mr. District Attorney.

Q. Well, we will show you. Look at the diary. Well, if you will help me to find them—do you remember them?

A. I don't think that was done, though. Here is—wait, I didn't know when I read this, I thought it had something to do with my work in the office, I put down the time here.

[fol. 282] Q. Here is—

A. (interrupting) Here is "e. f." That is in four consecutive days, isn't it?

Q. Let me see what happened that day, what is in that diary, read what took place.

A. That is a Tuesday, January 22nd; "When I wanted to start my car my battery discharged. Peterson pulled

[fol. 283] me with his car until the motor started and then I drove to Sears Roebuck to buy a new fifteen plate battery with a three-year guarantee. I went to our band—"

Q. (Interrupting) Isn't that "Benne" who testified against you?

A. "I went to Benne"—I couldn't read my own handwriting here—"to prove or to check the Steuben books, that is, the cash books, and so on. Officially, we had an interesting political conversation which was made groggy with beer and whisky. Benne is a pensioned soldier of the United States Army."

Q. Is there any reason that that "e. f." should be on that notation on that date? A. No, there isn't.

Q. Now, the "e. f." follows up on the next entry, the one of January 23rd and the next is January 24th.

A. Do you want me to translate this?

Q. Yes, go right ahead.

A. On Wednesday, January 24, 1940. "It was cold all through the day, averaged zero degrees Fahrenheit. Stayed at home. Neighbor"—I don't know who the neighbor was—"neighbor," I don't recall what that means, it just says "neighbor."

Q. Now, there is an "e. f." notation on that entry. There is also one the 25th day of January. In other words, three straight consecutive days it occurs, doesn't it?

A. It does, on four days. There is another one.

Q. Also on—that was January what? (Tr. 440)

A. January 26th.

Q. In other words, the 23rd, 24th, 25th and 26th?

A. Yes.

Q. Does it occur again?

A. It isn't plain, anyhow, in any way what that "e. f." [fol. 284] would mean.

Q. Why can't you tell us?

A. Because I don't know.

Q. You put it down in your diary, you considered it of such importance you put it down in your diary for four straight days and there are certain other days.

A. Is it on certain other days?

Q. Look at the diary. A. I don't know.

Q. Look it over.

The Court: Well, the question is, do you know what it means or do you not know?

A. No, I do not know what it means.
Q. All right. Let's go on to something else.

The Court: Well, let's recess now until one-thirty.

Mr. Rhodes: May I ask if you want Mr. Baumgartner to go to his room to search for another volume of his diary? He has an hour.

Mr. Milligan: I have made the request of him and he said he would.

Mr. Rhodes: He will go out as quickly as he can. He may be back at one-thirty or two o'clock, we can't tell.

The Court: Be here at one-thirty, whether you get the (Tr. 441) diary or don't get it.

Mr. Rhodes: Make an effort to go out and if you don't want to send an F. B. I. man with him, is that it?

Mr. Milligan: No, sir.

Mr. Rhodes: All right, you go and if you can get out and back by one-thirty, all right. If you can't don't go [fol. 285] out, come back. You have to be here at one-thirty.

Whereupon, the Court stood at recess until 1:30 o'clock p. m., on Wednesday, November 11, 1942. (Tr. 442)

Afternoon Session, Wednesday, November 11, 1942.

Pursuant to adjournment as aforesaid, at one-thirty o'clock p. m. of said Wednesday, November 11, 1942, the Court met, present and presiding as before, and the trial continued as follows:

The Court: Continue with the trial.

CARL WILHELM BAUMGARTNER resumed the stand, having been previously duly sworn, and testified further as follows:

Cross-Examination (Continued)

By Mr. Milligan:

Q. Mr. Baumgartner, have you had an opportunity to visit your quarters? A. I have, yes.

Q. Have you any further copies of the diary?

A. No, I didn't find the diary; I didn't find any copy of the diary. I searched in my drawers and I found books on other things but not the diary. I searched for about fifteen minutes.

Q. You found no further copy of a diary?

A. No.

Q. You found no diary covering the period from July, 1941 until after 1941?

A. After July, after this last book?

Q. The last item was in July, wasn't it?

A. Yes, sir.

Mr. Milligan: I believe that is all.

The Court: That is all unless you had some redirect.

[fol. 286] Mr. Rhodes: That is all. (Tr. 443)

(Witness excused.)

The Court: Have you any further testimony, Captain Rhodes?

Mr. Rhodes: The defendant rests, your Honor.

Whereupon, the defendant rested his case.

The Court: Any rebuttal?

Mr. Milligan: No, sir.

Whereupon, the Government rested its case.

The Court: You may have an hour on a side for the argument. Proceed with the argument. (Tr. 444)

Filed in the United States District Court Feb. 3, 1943.

[fol. 287] (Defendant's Exhibit A.)

April 13, 1939

Rev. Walter H. North,
Ciuntry Club Congregational Church
65th and Brookside Rd.

Dear Mr. North:

It is with a feeling of regret that I am writing you this letter because it means saying good-bye to a congregation of fine and sympathetic people with whom I had the privilege to be associated for the past four years. During this time I also have derived a great deal of satisfaction as a Sunday School teacher and as a deacon, for I have always felt, that there is nothing greater than to serve one's fellow men unselfishly, and without expectation of reward. This I regard as the quintessence of Christianity.

An expiication then for my decision to leave the Congregational Church is not quite simple. You know that up to the great war I belonged to the Roman Catholic Church. The part of country where I spent the years of my childhood, is entirely Catholic, and has been so for hundred of years. Perhaps there lies part of the explanation.

Then there was the war, and the years immediately after, with their complete absence of any Christian influence on the actions of nations and individuals, which left a bitter taste of cynicism in regard to the efficaciousness of the Christian Churches. Almost without exception the ministers and priest of these Churches became the ready tools in the hands of the war makers, complaisantly patting patting their nations on their backs, and, at the same time, calling on God, to send punishment upon the godless enemies.

It almost appears, as if today the same conditions were coming back again.

But whatever the various reasons may be, I feel, that I must be alone with myself for awhile, in order to avoid a condition which I would call religious illness.

I now wish to thank you and the congregation for t
good-fellowship, and any act of friendliness, extended
my family or to myself.

Very sincerely yours,

P. S. Enclosed please find check for $5.—which will cov
the balance of my pledge and a special Eater offering f
the benefit of the church.

Country Club Congregational Church
The Church With the Star
205 WEST SIXTY-FIFTH STREET
KANSAS CITY, MISSOURI

REV WALTER HENRY NORTH
Minister
MISS HELEN SCOTT
Church Secretary
Office Telephone, JAckson 4813

DEFENDANT'S
Exhibit D-4

April 26-39

My Dear Carl

I have your letter of the 13th and must apologize for delaying my reply so long. I am much pleased that you have found some satisfaction in your capacity as a teacher of boys and as a deacon. Somewhere in Holy Writ it says. "Cast thy bread upon the waters and you shall find it after many days." I very much appreciate the splendid cooperation you have given the church in the time taken for the several services such as. faculty, deacons, special committees, The Men's Forum and all the rest. You have been faithful you have been an inspiration. You have commanded the respect and admiration of your fellow workers. I hold you in great esteem as a Christian. I am sure you are thoroughly conscientious; and that frequently you must be disappointed in the superficial and artificial attitudes of people, church people. toward the pressing problems of our days.

These days are always terrible days. They either makes or breaks a character. At the consolation

believes. The kings - The ministers and priests, as you say, became the victims of propaganda and prayed for victory for their cause - and the defeat of the enemies - Jesus there was that refused to be taken in. If Christ comes again as he shall witness the same thing in every land - Christ will be Crucified all over again - as some one has said, because men lose no imagination - Our hope is that there will be wisdom enough on all sides to prevent the evil which seems impending - I feel deeply that every man must be true to his own ideals and his own conscience - and it is the business of the church as best it can, to keep ~~clear~~ the ideals high and clear and the conscience sensitive - and true - Not a weather vane but a magnetic needle sort of thing -

I quite respect your desire to be alone with yourself - for awhile - May I suggest that you need not resign from the church membership - Usually when our members change their relationships they take a letter of transfer or notice of withdrawal -

If you are not sure about joining some other church for a time, why not let your membership remain with us - in an inactive relationship until you have made such adjustments as you wish to make - As an inactive member you are relieved of any responsibilities for our work - But that

time you will know whether you want to transfer to some other church or renew your active relationship with us.

We thank you for your check for $5.00 which completes your pledge, with an Easter offering added. You will be interested to know that the prospect for closing the year with all bills paid are better than we have had for several years. We had a very delightful Dinner at the Illinois K. C. Monday night We had 200 diners and it was quite a successful occasion - although our Pledge list did not total as much as we hoped.

I hope I may have the opportunity to see you every now and then. Please give my very best regards to Mrs. Baumgartner and believe me to be

Very sincerely Yours -

Theo A. Wahl

[fol. 291] (Defendant's Exhibit G.)

Kansas City, Missouri,

May 27, 1942

I, Carl Wilhelm Baumgartner, do hereby make the following voluntary statement to Paul H. Lewis and J. W. Menzie who have identified themselves to me as Special Agents of the Federal Bureau of Investigation. I have been advised that I do not have to make this statement and that what I do say may be used against me in a court of law. No threats or promises of reward of any kind whatsoever have been made to me.

I was born in Kehl, Germany, January 20, 1895. I received my education at the university located at Darmstadt, Germany. During the first World War I enlisted in the German Army in 1914 and in about April, 1917, I received a commission as a 2nd Lieutenant. Also about that time I was captured and held prisoner in England until about November, 1919. At that time I returned to Germany and pursued my studies as an engineer.

I came to the United States on February 9, 1927, landing at New York City, New York, on the vessel Hamburg. I had been married on January 20, 1927, at Darmstadt, Germany, to my wife, Elizabeth Weiss Baumgartner, who followed me to the United States. She arrived at New York City, New York, in August, 1927.

I went from New York City to Murphysboro, Illinois, where I visited the Alphonse Gebhardt family for approximately three months. I then came to Kansas City, Missouri, at which city I was joined by my wife.

I worked for awhile with the American Radiator Company and in about August, 1927, I received a position with the Kansas City Power and Light Company and at present am employed by that company in the capacity of a laboratory engineer.

I filed my petition for naturalization in the spring of 1932 and in September, 1932, I was naturalized in the Federal Court, Western District of Missouri, at Kansas City, Missouri. I had previously filed my declaration of in-

tention to become a citizen and also filed my petition for citizenship in this same court.

I have three children, Edith, age 12, and twins, Carl and Dorothy, age 8. My children were all born in Kansas City, Missouri.

In May, 1939, my wife and the children returned to Germany to visit her parents at Darmstadt, Germany. There was no fixed time for her to stay but she had told me that [fol. 292] if she liked it she might stay a year. My wife cabled me in September, 1939, to obtain some money since she wanted to return to the United States. However, war had broken out in Europe at that time and also I was unable to obtain money for her return trip so I cabled her to stay in Germany until such time as it would be safe for her to return. I never intended for my wife to remain permanently in Germany.

I have never subscribed to any German newspapers published in Germany, except in the early 1930's I subscribed to the "Berliner Illustriete Zeitung" a pictorial review published in Berlin. I subscribed to this newspaper for general informational purposes and held a subscription for about three years at which time the price went up and I discontinued my subscription. I also subscribed to a professional magazine published in Berlin, the "Elektrotechnische Zeitung." I took this magazine until about 1937 at which time the price became prohibitive and I discontinued my subscription.

In the fall of 1939 I started to receive the publication "Facts in Review" which was put out by the German Library of Information. I received this pamphlet until the discontinuance of business by the German Library of Information. I did not subscribe to this pamphlet and can only suppose that my name was furnished to them by the German Vice Consul in Kansas City, Missouri.

In regard to the allegation made against me that at the time that I was employed by the Kansas City Power and Light Company working on the outside lines during the year 1927 when one of my bosses was a man by the name of McKenzie, I wish to state that I did not at that time engage in arguments stating that the German people were superior to other people, nor that the German nation was

superior to any other nation. I cannot recall of any arguments or criticisms concerning any actions on my part at that time. I definitely state that I did not try to impress anyone with German superiority. I could not speak English very well at that time and I merely attended to my own business.

I was a member of the Country Club Congregational Church, 65th and Brookside, Kansas City, Missouri, for about four or five years and in 1938 I left this church since I did not agree with the policies of Dr. Walter North. I do not recall any specific statements he made but during this time the tenor of his sermons involved an intermingling of politics in religion. It was my impression that he attempted to convey the idea that there were righteous nations and criminal nations. It is my belief that the church should indulge only in religious activities and political arguments should not enter into the church's program.

[fol. 293] For this reason I resigned from this church. I cannot recall any specific statements made by Dr. North concerning this but wish to state that my decision was based upon a gradual process.

The allegation has also been made against me that I advocated the policies of Hitler and supported Germany during the time that I was a teacher in the Sunday School class during the year 1938 at the Country Club Congregational. I would like to state that Germany as a subject was never introduced by myself, but that on several occasions some of the boys would ask questions concerning Germany and I would attempt to explain to them Germany's situation in international affairs. I tried to explain on these occasions why the German nation took the course of action it was taking at that time, but I never attempted to say whether that course of action was right or wrong. In other words, any discussions which arose in this Sunday School class were purely impersonal.

I have never made any statements to people in my neighborhood where I advocated Hitler or Hitler's program. I never stated that any nation was superior to the other.

In the fall of 1939 I took a two week trip through Texas with Herbert A. Martini whom I met at the home of Gus

Schwedler about three months previous. Martini and I did not get along very well since he is an irrational fellow and I had nothing whatsoever to do with him upon our return. We did not attend any German-American society conventions of any nature on this trip.

I have also been accused of being anti-British and anti-Jewish. I wish to state that I am not. To me Hitler is a phenomenon and he has no emotional meaning to me whatsoever. His policies, of course, are against the interests of the United States and, of course, I cannot be in favor of them. I can explain his policies but I cannot be in favor of them. I never have approached anyone of my own accord to talk to them about Hitler or Germany. On several occasions the subject has been brought up and I have been asked my views and upon these times I have given an explanation of why Hitler is following his present course. I have never, however, stated that I was in favor of his policies.

In conclusion I wish to state that I am an American citizen; that I have disclaimed and still do disclaim any allegiance whatsoever to Germany and further that I have made no remarks or committed any acts against the gov-
[fol. 294] ment of the United States.

I have read the above statement consisting of four pages and fully understand the contents thereof. I am affixing my signature to this statement which testifies to the fact that I have so read this statement and that the contents of this statement are true to the best of my knowledge.

CARL W. BAUMGARTNER.

Witnesses:

J. W. Menzie,
Special Agent,
Federal Bureau of Investigation,
707 United States Court House,
Kansas City, Missouri.

Paul H. Lewis,
Special Agent,
Federal Bureau of Investigation,
707 United States Court House,
Kansas City, Missouri.

[fol. 295] Plaintiff's Exhibit 1.

U. S. Department of Labor
Bureau of Naturalization

No. 16 2678

Certificate of Arrival

I Hereby Certify that the immigration records show that the alien named below arrived at the port, on the date, and in the manner shown, and was lawfully admitted to the United States of America for permanent residence.

Port of Entry: New York, N. Y.
Name: Karl Baumgarten
Date: Feb. 9, 1927
Manner of arrival: SS Hamburg

I Further Certify that this certificate of arrival is issued under authority of, and in conformity with, the provisions of the Act of June 29, 1906, as amended, solely for the use of the alien herein named and only for naturalization purposes.

In Witness Whereof, this Certificate of Arrival is issued April 18, 1932.

By Direction of the Secretary of Labor.

RAYMOND F. CRIST,
Commissioner of Naturalization.

kel

[fol. 296] Plaintiff's Exhibit 2.

No. 10565 2678
742

U. S. Department of Labor
Naturalization Service

United States of America

Declaration of Intention

Invalid for all purposes seven years after the date hereof

United States of America,
West. Div., West. Dist. of Missouri—ss.:

In the District Court of United States

I, Carl Wilhelm Baumgartner, aged 32 years, occupation Electrical Engineer, do declare on oath that my personal

description is: Color White, complexion Fair, height 6 feet, 0 inches, weight pounds, color of hair , color of eyes other visible distinctive marks None. I was born in Kehl, Germany, on the 20th day of January, anno Domini 1895; I now reside at 2629 Tracy Ave., Kansas City, Missouri. I emigrated to the United States of America from Hamburg, Germany, on the vessel Hamburg; my last foreign residence was Darmstadt, Germany; I am married; the name of my wife is Elsbeth Gertrude; she was born at Gotha, Germany, and now resides at Darmstadt, Germany. It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to The German Reich of whom I am now a subject; I arrived at the port of New York in the State of New York, on or about the 9th day of February, anno Domini 1927; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to permanently reside therein; So Help Me God.

CARL WILHELM BAUMGARTNER.

Subscribed and sworn to before me in the office of the Clerk of said Court this 14th day of June, anno Domini 1927.

EDWIN R. DURHAM,
(SEAL) Clerk of the U. S. District Court.
By R. V. Outcalt,
Deputy Clerk.

[fol. 297] Plaintiff's Exhibit 3.

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No. 6197

United States of America

Petition for Citizenship

To the Honorable the District Court of United States at Kansas City:

The petition of Carl Wilhelm Baumgartner, hereby filed, respectfully shows (1) My place of residence is 5329 Olive Kansas City, Mo. (2) My occupation is Electrical En-

gineer. (3) I was born in Kehl, Germany on January 20, 1895. My race is German. (4) I declared my intention to become a citizen of the United States on June 14, 1927, in the U. S. District Court of United States, at Kansas City, Mo. (5) I am married. The name of my wife is Elizabeth Baumgartner, we were merried on Jan. 20, 1927 at Darmstadt, Germany. She was born at Gotha, Germany, on April 23, 1906; entered the United States at New York, N. Y., on Aug. 1927 for permanent residence therein, and now resides at Kansas City, Missouri; I have 1 children, and the name, date and place of birth, and place of residence of each of said children are as follows: Edith Gertrude Baumgartner, born Aug. 4, 1929 at Kansas City, Mo., and lives at Kansas City, Mo. (6) My last foreign residence was Darmstadt, Germany. I emigrated to the United States of America from Hamburg, Germany. My lawful entry for permanent residence in the United States was at New York, N. Y., under the name of Karl Baumgarten on Feb. 9, 1927, on the vessel Hamburg as shown by the certificate of my arrival attached hereto. (7) I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. It is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to The German Reich of whom (which) at this time I am a subject (or citizen), and it is my intention to reside permanently in the United States. (8) I am able to speak the English language. (9) I have resided continuously in the United States of America for the term of five years at least immediately preceding the date of this petition, to wit, since Feb. 9, 1927 and in the County of Jackson this State, continuously next preceding the date of this petition, since March 1, 1927, being a residence within said county of at least six months next preceding the date of this petition. (10) I have not heretofore made petition for citizenship: Number x , on x at x and such

petition was denied by that Court for the following reasons and causes, to wit: and the cause of such denial has since been cured or removed.

Attached hereto and made a part of this, my petition for citizenship, are my declaration of intention to become a citizen of the United States, certificate from the Department of Labor of my said arrival, and the affidavits of the two verifying witnesses required by law.

Wherefore, I, your petitioner, pray that I may be admitted a citizen of the United States of America, and that my name be changed to x

I, your aforesaid petitioner being duly sworn, depose and say that I have read (heard read) this petition and know the contents thereof; that the same is true of my own knowledge except as to matters herein stated to be alleged upon information and belief, and that as to those matters I believe it to be true; and that this petition is signed by me with my full, true name.

CARL WILHELM BAUMGARTNER.

[fol. 298] Affidavits of Witnesses

Henry Ortmann, occupation, Business Man, residing at 5040 Garfield, K. C. Mo., and Charles Zeyn, occupation, Prop. Sheet Metal Works, residing at 5020 Garfield, K. C. Mo., each being severally, duly, and respectively sworn, deposes and says that he is a citizen of the United States of America; that he has personally known and has been acquainted in the United States with Carl Wilhelm Baumgartner, the petitioner above mentioned, since May 1, 1927, and that to his personal knowledge the petitioner has resided in the United States continuously preceding the date of filing this petition, of which this affidavit is a part, to wit, since the date last mentioned, and at Kansas City, in the County of Jackson, this State, in which the above-entitled petition is made, continuously since May 1, 1927, and that he has personal knowledge that the petitioner is and during all such periods has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United

States, and that in his opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

HENRY ORTMANN,
(Signature of Witness)

CHAS. ZEYN,
(Signature of Witness)

Subscribed and sworn to before me by the above-named petitioner and witnesses in the office of the Clerk of said Court at Kansas City this 16th day of May, Anno Domini, 1932. I hereby certify that said certificate of arrival No. 16-2678 from the Department of Labor, showing the lawful entry for permanent residence of the petitioner above named, together with declaration of intention No. 10565 of such petitioner, has been by me filed with, attached to, and made a part of this petition on this date.

EDWIN R. DURHAM,
(SEAL) Clerk.
By Virginia C. Scovem,
Deputy Clerk.

[fol. 299] Plaintiff's Exhibit 4.

Oath of Allegiance

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to

The German Reich

of whom (which) I have heretofore been a subject (or citizen); that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So help me God. In acknowledgment whereof I have hereunto affixed my signature.

CARL WILHELM BAUMGARTEN.

Sworn to in open court, this 26th day of September, A. D. 1932.

EDWIN R. DURHAM,
Clerk.
By Arthur F. Schmahlfeldt,
Deputy Clerk.

Note.—In renunciation of title of nobility, add the following to the oath of allegiance before it is signed: "I further renounce the title of (give title or titles) an order of nobility, which I have heretofore held."

Petition granted: Line No. 29 of List No. 34 and Certificate No. 3532623 issued.

Petition denied: List No.

Petition continued from to Reason

[fol. 300] Plaintiff's Exhibit 5.

Original

Date September 26, 1932 List No. 34

This list consists of 3 sheets.

Sheet No. 1

Naturalization Petitions Recommended To Be Granted

To the Honorable the District Court of the United States for the Western District of Missouri, sitting at Kansas City (Western Division):

The undersigned, duly designated under the Act of June 8, 1926 (Public No. 358, 69th Cong.), to conduct preliminary hearings upon petitions for naturalization to the above-named Court, and to make findings and recommendations thereon, has personally examined under oath at a preliminary hearing each of the following Sixty-Six (66) petitioners for naturalization and their required witnesses, has found each of such petitioners entitled under the law to be naturalized, and therefore recommends that each such petition, upon the appearance of the petitioner in open Court, be granted, including prayer for change of name where noted below.

No.	Petn. No.	Name of Petitioner	Change of Name
1	6023	Max Huerlimann	
2	6038	Charles Raysigl	
3	6113	Herman Kopeiken	Herman Copaken
4	6123	Maria Basler	
5	6150	Schulein Chernos	Sam Shaw
6	6167	August Frank Wolf	
7	6168	William Robert Jentsch	
8	6170	Nargit Elizabet Jonason	Margaret Elizabeth Johnson.
9	6171	Franz Joseph Oschwald	Frank Joseph Oschwald
10	6172	Benjamin Raskin	
11	6173	Marius Thevdor Anderson	
12	6174	Chaim Girsh Kravchenko	Harry Kraft
13	6175	Robert Ernest Nestel	
14	6177	Carl Freed	
15	6178	Louis Nicholas Puhalo	
16	6179	Julius Herman Johann Aggen	
17	6180	Richard Rolf Schwab	
18	6181	Elsie Lenzen Fitzgerald	(Petition ordered amended
19	6182	George Hummel	adding the name Fitz-
20	6183	Joseph Stoklas	gerald, which name was
21	6184	Gustaf Marcellus Johanson	acquired by marriage
22	6185	Emilie Anna Christian	after petition was filed.)
23	6186	Paul Amaulry deGuebery	
24	6187	Elizabeth Gertrude deGueliery	
25	6189	John O'Brien	
26	6191	Josef Simon	
27	6193	Ethel Zoglin	
28	6195	Alfons Cyrail Van de Walle	
29	6197	Carl Wilhelm Baumgartner	
30	6198	Manasse Palaneski.	Milton Pollman
31	6199	Eva Kucher	
32	6200	Ida Beatrice Kucher	
33	6202	Johannes Max Morgenroth	Max Hans Morgenroth
34	6205	John Ingram	
35	6207	Josima Goossens	

[fol. 301] First sheet of three sheets of the list dated September 26, 1932, of 66 petitioners for naturalization.

Respectfully submitted:

Date September 26, 1932.

MICHAEL McCAUL

(Signature of designated examiner or officer)

[fol. 302] Plaintiff's Exhibit 6

Original

Date September 26, 1932. List No. 34
This list consists of 3 sheets.

Sheet No. 3

Naturalization Petitions Recommended To Be Granted—Continued

District Court of the United States, Western District of Missouri

No.	Petn. No.	Name of Petitioner	Change of Name
1	6210	Jacques Louis Leon Surer	
2	6211	Albert Rudolf Theodore Leimen	
3	6212	Ilona Gertrude Leimen	
4	M-6214	William Fred Raveill	
5	6215	Fritz Christian Oeser	
6	6216	Nils Marius Nilsen	
7	6217	Dora Rainen	
8	M-6219	Anthony Jamka	
9	6220	Barbara Bornkessel	
10	6221	Mary Murphy	
11	6222	Margaret Murphy	
12	6223	Andrew A. Klughartt	
13	6224	Alexander Joseph Byarsky,	Alexander Joseph Baier
14	6225	George Tsouloufas	
15	6226	Marcela Piecaitis (Sr. Mary Casimir)	
16	6228	Maria F. Zarate	
17	6229	Pablo Zarate, Jr.	
18	6231	Adolf Hermann	
19	6233	Justyn John Kolis	Justin John Kolie
20	6235	Marie Landerer Baker	
21	M-6236	Fara Nasa	
22	6237	Rebecca Jane Collier	
23	6238	Chris William Redman	
24	6239	Lea Kasrilowicz,	Lena Kiser.
25	6240	Marie Katherine Meister	
26	6241	Andres Mikula	
27	6242	John Ryan	
28	6243	Nils Herbert Cronquist	
29	6244	Willy Kurt Hofmann	
30	6282	Anna Zurbrick Laurie	

Third sheet of 3 sheets of the list dated September 26, 1932, of 66 petitioners for naturalization, except as to petition No. 6038 of Charles Raysigl which is continued.

Respectfully submitted:

Date September 26, 1932.

MICHAEL McCAUL,

(Signature of designated examiner or officer).

United States of America,
Western District of Missouri—ss.:

Upon consideration of the petitions for naturalization listed on this and the foregoing sheets Nos. 1 to 3, dated September 26, 1932, and the findings and recommendations thereon of a duly designated examiner or officer of the Bureau of Naturalization (or Naturalization Service), and each of the said petitioners having appeared in person at a final hearing held in open Court this 26th day of September, A. D. 1932, and having taken the oath prescribed by law, it is hereby ordered that each of the petitioners so listed be, and hereby is, admitted to become a citizen of the United States of America, and the prayer granted for change of name in petitions No. 6113, 6150, 6170, 6171, 6184, 6198, 6202, 6224, 6233 and 6239.

By the Court:.

ALBERT L. REEVES,
Judge.

[fol. 303] (Plaintiff's Exhibit 9.)

Translation from the German

Diari Re:

Baumgartner

Speeches 3/23/39
4/28/39
5/4/41

December 1, 1938, (Wednesday)

It is just about a year now since I decided not to smoke any more. I have kept my resolution so far.

Today I decided to begin a diary. A year ago I was curious to see how long I could keep my resolution not to smoke, and today I am just as curious to see how long I can keep up this new resolution.

In order to start with an incident which seems important enough to me to write down, I must go back two days. On November 29 the Executive Committee of our local unit of the Steuben Society of America, Lincoln Unit No. 29,

met in the home of our chairman, Gustav Schwedler (3334 Euclid Avenue) in order to consider a letter of protest written by me to the National Headquarters of the Steuben Society. This letter was a short protest against the suggestion of the National Headquarters to protest against the persecution of Jews in Germany. The main idea of my letter of protest was that such a requirement would be practically impossible for German Americans because, first of all, things are happening elsewhere in the world, especially here in our country, too, which are a thousand times worse than the so-called persecution of Jews in Germany. Secondly, the suggestion of the National Headquarters would be a direct aid for the instigators of the anti-German propaganda.

In my opinion the National Headquarters' proposal was made as a result of Jewish pressure. Whether this pressure came from within the ranks of the Steuben Society, from the outside, or from both, is something which is still unknown to us at the present time. However, this point may be cleared up soon because my letter of protest was accepted unanimously and was sent to New York. Furthermore, a motion was made that this letter of protest be published in the

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Steuben News. This motion was likewise passed. The members of the Executive Committee who were present at this meeting were: Gustav Schwedler, Hermann Gastreich, Paul Stolz, Max Riedel, Walter Riedel, and I. Henry V. Berner, Erich Sachs, and Ben Skaer were unable to come but they declared themselves in accord with the contents of the letter.

Thursday, December 6

Steuben meeting and elections in the evening. The nine officers were re-elected. I hope that we here in Kansas City are a healthy branch of the Steuben Society and that we will have enough energy to help heal the sick branches.

[fol. 304] Friday, December 9, 1938

In the evening I went to Bert Magbee for a "political" discussion. Mrs. Magbee had gone to the movies with her

little daughter to see Sonja Henie and so Bert asked me to drive him to St. Luke's and St. Joseph's Hospital. Bert is completely English in his interpretation of international affairs and thinks, in general, that England is big enough to keep other countries away from Germany by dealing out favors. At 9:30 we listened to "the Right Honorable Anthony Eden" speak to a meeting of American industrialists in New York. Eden was very tame and spoke in more or less general terms about the advantages of democracy.

In the meantime I learned from the German short wave set that the Right Honorable Anthony Eden gets paid very well for his speeches. He is supposed to have received $4,000 for his first speech and declined an offer from a group which wanted to pay him only $1200. Unasual people these English.

Friday, December 16, 1938

(Paragraph 3) Yesterday Swartz made some remarks about my speech at the Cooperative Club in Overland Park. He said that a certain Bell had heard the speech and had told Swartz that I had said I intended to return to Germany. This is pure invention. Swartz also said that during this conversation my

-3-

wife was also mentioned and she is supposed to have said that we need a Hitler here

Swartz is a shameless gossip, and I think that the next time that I see him I will tell him what I think of him. I suspect him of being a Jew.

Sunday, December 18

(Paragraph 1 only) In Sunday School one of my boys asked me about the article in last night's Kansas City Star, according to which the German Government was supposed to have prohibited Christmas celebrations and the singing of Christmas songs in the schools. I told the boy that I considered the article a gross lie which had been put into the paper by Jews in connection with Father Coughlin's findings on the radio last Sunday that the

Jewish National Council had convinced the educational authorities of two American cities (Cleveland and another) to stop holding Christmas celebrations in public schools because this embarrassed Jewish children.

Monday, December 19, 1938

(Bottom of second page) Upon coming home, I found a pamphlet entitled "Carl Schurz and German Unity" in the mail. It was sent to me by the author, Theodore Schrieber, Ph. D., Alma, Michigan, U. S. A. As yet I [fol. 305] do not know what the purpose of this is. The contents concerns the Greater German Movement in the first half of the last century and the new Greater German policy of National Socialist Germany under Adolph Hitler. The article, which according to the introduction is a speech made by the author in 1935 before various societies and learned bodies in the State of Michigan, is very interesting and attempts to give the American reader a true picture of the political situation of Germany in Europe.

Thursday, December 22, 1938

Today I received a case of 24 bottles of Pschorr "animator"—imported Munich strong beer. It is a Christmas present from my brother-in-law, Erich Weiss. It is an extremely original idea and is another proof of what an abundance of ideas the Germans have as compared to the pedantic, standardization-minded Americans. The only ones who have any ideas here

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are the Jews and their ideas are vile, mean, and malicious.

The answer of the American Government to the German protest against Ickes' common insults is so arrogant and brazen that it can have only one result, namely, to make the United States more unpopular and despised, not only in Germany but in the entire world, than it already has been without this. Of course, all these things are Bolshevist-Jewish machinations at the expense of the innocent American people.

How thoroughly unpopular North America is, even in its own continent, can be seen from the goings-on at the Lima Conference.

Wednesday, January 4, 1939

Today the President of the United States delivered his message to the new Congress. The speech was a horrible mixture of war agitation and laughable talk about the freedom of press, speech, etc., which this country allegedly has and which has to be protected with guns. When he told Congress that there were two alternatives, one to reduce government expenses and the other, not to do so, the first alternative was greeting with a storm of applause in spite of the fact that Roosevelt recommended the second. The speech was not only weak in logic but was actually silly in some points.

Thursday, January 5, 1939

Today we read in the paper that Roosevelt has appointed the Jew, Felix Frankfurter, a member of the Supreme Court. Although the possibility had been considered, we did not think that this appointment would be made. The Jews are noticing a slow but certain march of events and in a sort of panicky fear are trying to do everything to fortify their positions. That is the reason for Roosevelt's war cries, too.

[fol. 306] Thursday, January 5, 1939 (Pay day)

At seven in the evening I went to church for a deacons' meeting. Mr. North was especially friendly. Whether he intended to arouse my enthusiasm for the church with this or whether there is something else behind it, I still do not know. This man is completely under the influence of the Jews. On his desk was the latest copy of Time, the repulsive Jewish agitating

-5-

weekly. He also told us—with either honest or artificial naivete—how much he enjoyed the play "I Had Rather Be Right." This is a Jewish play and as far as I have heard about it, it ridicules and makes fun of the government of the United States. North says that it is too bad that we

deacons did not see it—it was wonderful! And this is a Christian clergyman. It makes me sick to think of it.

North asked me to call a meeting of the committee of the Men's Forum, and I promised to do it. Whether this was right I do not know. It does not exactly coincide with my feelings. However, it probably wouldn't help anyone if I should break with the sexton right now. They know my attitude on the Jewish question, and if my presence can help to put a damper on those, it will have served a good purpose.

After the meeting I stopped in at Eyssells where we naturally discussed the international situation again. Eyssells also told me that the exchange student Polenz von Lawrence (K. U.) had said that the German Government informed him that his parents could not send him the remaining twenty-five dollars and that he had written back to them, saying that he would then have to return to Germany sooner. The whole story sounds somewhat strange since his parents and not he would undoubtedly have been informed of such a government measure.

Saturday, January 7, 1939

In the morning I went to Schwedler's place. Saturday evening a Mr. Jack Hooper came to me and asked me to address his club (Oako) on Wednesday, January 11, at the LaSalle Hotel. We agreed on the subject of war experiences in order to avoid any controversial issues in the speech. Erich Sachs, of our Steuben Unit, came later to take care of certain preparations regarding solicitation of new members. Then we drank a bottle of Pschorr brew together to the welfare and the future of Germany. Sachs was very much excited to get a drink of German beer again after nine years.

Monday, January 9, 1939

Went to Schwedlers to play cards in the evening. As I write this,

[fol. 307] -6-

I notice that I have said very little of my family life in this diary in spite of the fact that I love my family very much and that it is hard for me to get used to the idea that they

are all going to Germany for a visit this spring so that I will have to remain alone for some time.

Wednesday, January 11, 1939

(Paragraph 2) In the evening I went to the LaSalle Hotel to address about 25 members of the Oako Club on "War Experiences." Among other things, I mentioned the German inflation of 1918-1923. From this an economic-political discussion developed in which a strong interest was shown by the entire group, especially in view of the present situation in the United States. I spoke for a little more than an hour and the accompanying discussion lasted for about forty minutes.

Sunday, January 15, 1939

During the general Sunday School service my good friend Neil Bartley, chairman of the Sunday School, pointed out several times that at the last teachers' meeting all teachers had been present except one. And used this as an example for the pupils to follow. I was this one. Since there was absolutely no reason for making this remark, I could take it only as a dig at me, especially since Neil once asked me in a rather brutal manner last fall why I did not resign from the church. He did this at that time because I had expressed my dislike of North's anti-German statements from the pulpit. At that time I wrote him a letter telling him that I did not particularly care for his remarks and asked to be relieved of my duties as Sunday School teacher.

Wednesday, January 18, 1939

My good friend Neil Bartley answered my letter and informed me that "we" accepted the resignation with regret. He made no mention of my reasons. With this, a very interesting chapter has come to a close, and I am so much the richer for the experience. Since experiences of this type, however, occur all too often, their individual value is not very great.

Friday, January 20, 1939

Today was my birthday and my twelfth wedding anniversary . . .

Sunday, January 22, 1939

I took the children to Sunday School and then visited Eyssells who live about half-way between our house and the church. For quite a while we discussed the lack of backbone among the German-Americans in the United [fol. 308] States. After this, I got the children from church and then went to attend the service myself. Pastor North evidently cannot preach any more sermons without taking a dig at Germany somehow or other. Today he did it by putting Germany, Italy, and Russia all into one category. He said these countries had something with which they filled their youth—something which the United States had lost, and this was "clamor." Now the word "clamor" simply means shouting and very often shouting because of dissatisfaction. He, however, made it sound as though "clamor" was something so wonderful that it was too good to be true. He claimed that we ought to have this, too, especially in religion. All in all, the whole sermon was a lot of silly chatter. What he probably wanted to say was that our youth does not have the enthusiasm which is found in Germany, etc. (Translator's note: The writer evidently confuses the word "glamour" with "clamor.")

Monday, January 30, 1939

Today Adolf Hitler made his long-awaited Reichstag address. I heard the re-broadcast of this speech on the German short wave broadcast from 6 to 8 P. M. The reception was so wonderful that the entire speech could be clearly understood. The speech was very frank and clear, and I was somewhat surprised to see that the newspapers called it one of the most unwarlike which Hitler ever made. It impressed me as though this reaction had already been decided upon without consideration of what the contents of the speech might really be. The Jews and the Catholic Church were both sharply rebuffed.

Monday, February 6, 1939

In the evening I went to Schwedlers to play cards. There I met Bernhard Mueller of St. Louis again. It is difficult for me to overcome my antipathy for this man. He is a

bombastic know-it-all who is extremely sensitive if you step on him just the least bit. With respect to world events he is so naively egotistical that events in Germany which appear to threaten his safety and comfort here in the United States, even to the slightest extent, are most sharply criticized by him. The imposing of the billion mark fine on the Jews in Germany made him extremely angry because this brought forth a furious denouncement in the Jewish press here. He never thinks of the fact that the Jews, during the period of inflation, had completely cleaned out the German people. He is a representative of that beer-table type of so-called better

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German citizens to which many academic occupations belong and who are known everywhere in the world as disagreeable people.

Tuesday, February 14, 1939

Today Zeglin came through Kansas City on his trip to the German Consulates in the West. He is attached to the [fol. 309] Consulate General in New York now. He thinks that the German American Bund's bark is worse than its bite, that it has no more than 2,000 members, and that it would fall into oblivion if it were not for the publicity which it provokes from time to time. The whole undertaking, in his opinion, is purely commercial and is only anti-Semitic without any definite aims. It is Zeglin's task to see that the Consulates prevent German citizens from joining political organizations.

I called for Zeglin at the Pickwick Hotel at six in the evening. He ate with us and stayed until about eleven o'clock. Then I took him to the Greyhound Bus Terminal again from where he continued his trip west at twelve o'clock. He expects to come back through Kansas City about the beginning of March.

Tuesday, February 21, 1939

I visited a man by the name of Kleditz with E. Sachs. He works with William Volker. He comes from Germany and cannot speak decent German any more. His English isn't so good either. Unsympathetic. If I am not mis-

taken, he is the man who helped the poor devil Heil ruin his life.

Saturday, February 25, 1939

At 8 P. M., as the result of an invitation from Fritz Jardon, I went to the home of a certain Mr. Roessel (interior decorator) where the German Vocational League was meeting for a film performance. Since I wanted to see what sort of an organization this Vocational League was, I accepted, as I have said, Jardon's invitation as well as Gastreich's, who is also a member. There I met a young man from Germany, Folthauer, a graduate engineer, who is at

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present an exchange student at K.U. As far as I can remember some of the others present were: Mr. and Mrs. Reichers (?), the parents of Mrs. Jardon; Mrs. Jardon, Mr. and Mrs. Gastreich, Mr. and Mrs. Schulze, the hosts, Mr. and Mrs. Roessel, Mr. Martini with a young lady, and another three or four couples whose names I do not remember. There must have been about 20 to 25 people altogether. A certain Mr. Lagna (?) was there, too. Since he was the speaker at this meeting, I take for granted that he is the chairman of the organization. I had met Lagna before. Last year he had been mentioned as a prospective member of the Steuben Society, but he was not admitted since he was not a citizen. A few months ago I heard that he claimed that he was a citizen. Schwedlers told me that he had been a member of the Free Masons which is a somewhat unusual thing for a man who claims to be a champion of German ideas.

This Mr. Lagna opened the meeting with the German national anthem, whereupon everyone naturally arose and [fol. 310] assumed the usual German stance with the arm extended to give the National Socialist greeting. I immediately had the feeling that something seemed to be wrong. This feeling grew stronger when Lagna, in his speech, painted the situation of the German Americans very black and stated that we could really do nothing except to have an occasional congenial get-together such as this one. In other words, we meet behind closed doors and darkened windows, sing the German national anthem

courageously, give the National Socialist salute even more bravely, and then decide that we must all be nice and quiet, that we can do nothing, and that things might even get worse.

Later in the course of the evening I said to one of the men, whose name I do not remember and who wore the "D" insignia on his lapel, that in my opinion it was the duty of German American citizens to stand up on their two feet and fend off all attacks on Germany. Thereupon this cautious man replied that we could not do this since we might lose our jobs.—For the refreshments which were served later, beer, cold cuts, and potato salad, I, who was a guest, was taxed two dollars just like everyone else present. I do not think that this was quite right since even the members were somewhat astonished at this fee because admission to this meeting was supposed to have been free. This is just my comment however.

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Thursday, March 2, 1939

I attended a committee meeting at the Turner Hall for the direction of the Winter Aid performance which is to take place March 18 and 19. On this occasion I became better acquainted with Attorney Otto Schmid, the democratic politician. He told us that Rev. Birkhead had reported him in Washington because he had presided at a Nazi meeting. Schmid probably had no difficulty vindicating himself because I think this fellow is a spy who tells the authorities everything that is going on in German American circles and who has set himself the task of seeing to it that the German herd of people continues to travel in the right direction. On top of this he is probably the president of the United German Societies, too.

Monday, March 13, 1939

The news on the German short wave seems to indicate that German intervention in Czechoslovakia is imminent. We played cards at Schwedlers. The Mueller fellow from St. Louis was there again.

Wednesday, March 15, 1939

Germany occupies Bohemia and Moravia. End of Czechoslovakia. Hitler goes to Prague. That ends this episode.

[fol. 311] The Jewish-American-English fortress in the heart of Central Europe has fallen. A terrible defeat for the above named powers who will probably have a difficult time recovering from this.

Zachows informed us today that we can rent the house furnished. The North German Lloyd also informed Gastreich that the tickets for the children were ready.

Thursday, March 16, 1939

Gastreich called me up and told me that we would have a preview of the German films at Eastman Kodak tonight at 5:30. The preview was very short, but we could see that the films were good.

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Sunday, February 19, 1939 (sic)

The world situation, after Hitler's seizure of power in Bohemia and Moravia, has now reached a stage of angry abuse again. The English-American Jewry has had its trump card turned up, and its main trump has been taken away. This is the reason for the unbridled outbreak of anger.

Stayed home all day. Bobby went to the Turner Hall in the evening in order to see the films.

I want to add that the Mottberg clique of the Turnverein wanted to forbid us to display the German flag next to the American at the Winter Aid fair. At a special meeting of the board of directors of the Turnverein, Mottberg was persuaded to give in whereupon Dr. Lyon, an English-American, resigned as director. The entire situation shows the sad condition of Germandom in various circles.

Tuesday, February 21, 1939 (sic)

(Paragraph 2) The papers say that Memel will soon return to Germany. As a result of the Bohemian-Moravian crisis, England has lost her head completely and instead of accepting the matter gracefully, she has demanded the formation of a Communist-Capitalist anti-German Bloc. This is probably the greatest diplomatic mistake that the English policy has made during our time and can only be

due to the panic-stricken situation in which Great Britain finds herself today.

Thursday, March 23, 1939

Today I heard the radio broadcast of the entrance of Hitler into Memel. Dr. Neumann spoke and then Hitler himself. The church bells could be heard during the entire broadcast. This ends another of the crazy doings of the western democracies.

[fol. 312] In the evening we had a Steuben meeting. Long discussion about the refusal of various members of the Turnverein to display the German flag at the Winter Aid. Gastreich argued that names should not be mentioned since this was an organizational matter and not a personal one. I took up the other point of view since most of the Turners did not know anything about the flag question. Gastreich also advocated the purchase of a German House while Schwedler and I wanted to come to an agreement with the Turnverein. Gastreich prefers to act against the windmills of legal persons (Turnverein) since he does not want to antagonize any actual individuals.

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Saturday, March 25

Went to Bank (Traders) where I took out a loan of $450 on my US and R stocks. Also bought films to take pictures.

Sunday, March 26

(Last two paragraphs) Mussolini's speech was sensational and all radio stations carried it. According to the comments from London and Paris, one seems to be able to conclude that Mussolini will probably get what he wants, namely, Djibouti, Tunis, and use of the Suez Canal.

Monday, March 27, 1939

Stayed home at night to write Steuben Corner article and to develop films.

Received a letter from my mother-in-law today in which she tells us how anxiously they are all looking forward to the arrival of Bobby and the children.

Wednesday, March 29, 1939

Sachs came over in the evening to discuss the card party with me which the Steuben Society intends to hold in order to make some money for publicity for the National Council. Sachs is a good fellow and a good German who has not been Americanized, that is, ruined.

Thursday, March 30, 1939

Went to Nessels in the evening in order to make him a member of the Steuben Society if possible.

I could see immediately that I was dealing with the prototype of the weak-minded German Philistine who knows only his own interests and who looks at the individual's obligations toward the community as something [fol. 313] which he cannot

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understand. "I did not bother with politics in Germany and I won't do it here either," he said to me. He does not realize that here in this country he is living in a community of people who, at least theoretically, make participation in politics an obligation for every one.

After this I went to Jardon for the same reason. He seems to think that the American citizen of German descent can do nothing better than to work to get political influence for the Germans. I think that he will become a Steuben member.

Sunday, April 2, 1939

The speech which Hitler made yesterday has been completely misrepresented by the American newspapers. The speech did not indicate a giving-in but was a clear acceptance of the somewhat unusual challenge of the English who were threatening Germany with encirclement.

Friday, April 7

Albania occupied by Italy. At the beginning of the week Gastreich phoned my wife to tell her that the Steuben Corner could not appear again in this week's Kansas City Presse since only the most important items could

be printed because of a strike in the print shop. For this reason I waited for the appearance of the paper. Now it seems that in today's paper there are so many uninteresting things that Gastreich's explanation does not satisfy me. Perhaps I am seeing things, but it seems to me as if the publishers of the K.C.P. are not quite what we of the Steuben Society would like them to be. In other words, they may be motivated by "kosher" influence.

Saturday, April 8, 1939

Wrote a letter to Gastreich as manager of the K.C.P. In it I explained to him that I did not like the non-appearance of the Steuben Corner for two issues and that this seemed to me to be a policy with which I could not agree. Since the paper while doing this has printed a great deal of material of questionable value, I said that I would make a motion to give up the Steuben Corner at our next meeting.

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Monday, April 10, 1939

The "western democracies," especially the U.S.A., are busy with their ridiculous shouts of war. Gastreich called up in the evening and asked, in a pretty nasty way, how I had come to write him a letter about the Steuben Corner. I don't like this fellow any more. Instead of admitting [fol. 314] that the Kansas City Presse did not act correctly in considering the Steuben Corner as unimportant material, he tries to act as though he were insulted in spite of the fact that he was not mentioned personally in any way.

Thursday, April 13, 1939

The discussion at the Steuben meeting, which was held as a result of my suggestion, was successful. The suggestions under discussion were: the relation of the United States to the rest of the world, the present situation of the British Empire and the totalitarian states.

With regard to the question as to whether the Steuben Corner should be given up, I followed the advice of Schwedler and helped to minimize the matter. Gastreich again pretended to feel hurt. However, I decided that if

Gastreich gave me the slightest excuse in this respect I would bring up my point again.

Today, I also sent a letter to Mr. North, the pastor of the Congregational Church, in which I told him that I was resigning from the Church. I gave him to understand that the reason for this was that the Christian churches, just as during the last war, were becoming agitators again who approved of everything which their own nations did and who called down the wrath of God upon their godless enemies. I also enclosed a check for the remainder of my annual subscription and $3.50 as an Easter donation. Now I have worked for the church for four years as deacon and as Sunday School teacher and have supported the church financially during this time. According to this, I owe no one anything.

Monday, April 19, 1939

In the evening I went to Sachs for a committee meeting in order to discuss the April 29 card party (to be held by the Lincoln Unit No. 29). Ben Skaer and Walter Riedel were present. After this, I went to the Schwedlers

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where we discussed the international situation for awhile. It seems as though England wants to give in, what with Lord Halifax's explanation that an encirclement of Germany was absolutely unthought of by the British. And the birthday congratulations of the king to Hitler: all these chess plays are naturally only part of Britain's lying policy and are completely dishonest.

Thursday, April 20, 1939

Today I was invited to speak at the luncheon of the K. C. Southside Business Club in the Park Lane Hotel. I spoke on the subject "Germany between the World [fol. 315] War and Now." More than 200 people were there and various Pund (?) S. Co. people. Vice Presidents Kuhn and Clark, Spencer (?), P. Cornelius (?), Palmer, Graham, Dunne (?), and others.

In the evening we had Martini as a guest. Martini is a nice fellow only he is very nervous and restless.

Friday, April 21, 1939

A Mr. Sogern (?) of the Engineer's Club called me up and, referring to my speech of yesterday, asked me whether I could address the Engineer's Club on May 15. Upon my answer in the affirmative, he invited me to lunch for Monday in order to discuss the details.

Saturday, April 22, 1939

Gave Gastreich the $13.50 from the Winter Aid. The net profit was only about $85 altogether.

In the evening I went with Schwedlers to hear a talk by a German student in the Turner Hall. The speaker's name, I believe, was Schnitz, and as he told me, he had studied in Berkeley, California. He spoke about his experiences in a German work camp and of his two years in the army. As a soldier, he marched into Austria with the German troops. One cannot blame him for being so enthusiastic about the new Germany and for speaking so disdainfully about America in spite of the fact that he is probably acting contrary to instructions. . . .

The talk was very interesting, not so much from a general standpoint as from the consideration of the speaker himself who probably represents young Germany quite accurately.

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The attendance was not very good. There were probably not more than 30 people there while down below in the beer cellar a large crowd was amusing itself. These were the members of the Germania Men's Singing Society who were having a social evening.

Thursday, April 27, 1939

Acceptance of members in the Steuben Society. Jardon, strangely enough, was not there.

Friday, April 28, 1939

Got up at 4:30 to hear Hitler's speech. There are no words to describe how wonderful it was.

[fol. 316] Monday, May 1, 1939

Had a lively discussion with Don Hawley of the ....? ... Dept. Hawley is a member of the American Legion and was formerly a unit leader.

According to Hawley, a naturalized citizen does not have the same right to express his opinion as a native citizen.

Tuesday, May 2, 1939

In the evening we went to Ortmanns so that Bobby could say good-bye. We started to talk about Germany and the Jews. I might have expected such a pro-Jewish and anti-German atmosphere in a Jewish home but never in the home of a so-called German-American. Besides, the old Ortmann is slowly getting childish. I was glad when I was out of the house again.

Saturday, May 6, 1939

Went to Gastreich's office in the morning to get the ticket for Bobby ($221.50). Gastreich told me that a protest was being submitted to the city government against the film "Confessions of a Nazi Spy." He told me that he had called up Schwedler on Friday but that the latter had done nothing. He further told me that he and Kissenger (attorney) had gone to the present city manager, Zachmann, and that Zachmann had informed the city trustee, which had to be done. When I asked him whether anyone had seen the picture, he said no. He then asked me to come to see him at 1 o'clock with Schwedler and Kissenger to discuss further steps.

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In spite of the fact that I had work to do at home, I agreed and then went to Schwedler.

When we met at one o'clock, Kissenger was not there, so Gus Schwedler and I went to the Orpheum Theater in order to see the picture so that we would be able to discuss it. When we returned at 3:30, we went to Kissenger with Gastreich, and I told him about the contents of the picture so that he would be able to draw up a corresponding petition, for which we would then have to get a minimum of fifteen signatures.

Sunday, May 7, 1939

In the morning I took a walk to Trillers. No one was home. Apparently the people had not yet returned.

In the afternoon I went to Reichers and Jardons to get signatures. I learned there that Jardon had already collected signatures and that Gastreich had made the dis- [fol. 317] paraging remark to him about the Steuben Society that they should really protest. Since Gastreich is a Steuben member himself and Jardon was ready to become one, Gastreich, from a Steuben standpoint, acted rather disagreeably, telling a man who was a prospective member things that would make his trust in the organization waver.

In the afternoon and evening we were invited to dinner by Chris. Jones. We also went for a ride in his new Chevrolet.

Regarding the above protest matter, I want to add that Max Riedel telephoned the city censor, Mrs. Walton, in order to protest personally to her against the showing of the picture. Max Riedel knows Mrs. Walton quite well.

Friday, May 18, 1939

. . . Bobby and the children left today . . . . . It starts a new chapter in my life . . .

Tuesday, June 6, 1939

The August Eyssells were here with Fred. We listened to a German radio program. The reception was very good. Fred Eyssell, who studied in Germany, for a year, is an admirer of Germany. It is astonishing how much

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Germany has impressed this young man. He behaves like one who knows that he can be proud of the people and the land of his ancestry. . . .

Sunday, June 18, 1939

Took Eyssells and one of Mrs. Eyssell's sisters to Excelsior Springs. I liked the town quite well. The Mrs.

Hucke who was along is, although not quite anti-German, nevertheless, somewhat influenced by the American arguments of Hitler. Of course, Mrs. Eyssel tried to excuse her sister. . . .

Monday, June 19, 1939

Went to Schwedlers in the evening to play cards. Heard that W. Sitter has returned from Germany . . .

Thursday, June 22, 1939

Steuben meeting. Sitter, who recently returned from Germany, spoke about Germany. He was very enthusiastic and called Germany the most beautiful country in the world.

[fol. 318] Monday, July 3, 1939

Met Martini in the evening. Went to the airport and later to a little tavern, "Heidelberg," on 24th and Indiana. The owner, Koenig, is an acquaintance of Martini. Forgot all about going to Schwedlers to play cards.

Thursday, July 6, 1939

Took Eyssells for a ride in the evening. We drove around for about an hour and finally wound up at the Kansas City Airport where we watched four planes land. This is the third hot day now.

Monday, July 24, 1939 (Paragraph 2)

. . . Later I went to Schwedlers where I learned that my article in the Steuben Corner "Laziness or Cowardice" hit the mark, or at least one mark, because Mr. Ortmann told Otto Schwedler his opinion of it.

Sunday, July 30, 1939

Went with Martini and Miss Kash to Springhill, Kansas, in their (her?) car to visit Miss Kash's parents. It was very nice. We were back home by nine in the evening.

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Thursday, August 10, 1939

I have changed my vacation time and will start on my trip with Martini the day after tomorrow. We plan to go to Galveston, the Grand Canyon, and to return via Denver.

Friday, August 25, 1939

Returned from my vacation trip this morning. I am glad that I am rid of Martini. Slept practically the whole day.

Sunday, August 27, 1939

Steuben picnic at Steneck (?). Moderate attendance.

Friday, September 1, 1939

War news. Fuehrer Hitler orders the army to return force with force in the Polish argument.

[fol. 319] Sunday, September 3, 1939

Newspapers tell us that England has declared war on Germany. The German short wave station is a blessing. The Jewish newspapers (Star) can hardly hide their joy. Stayed at Schwedlers almost all day. Letter to Bobby.

Monday, September 4, 1939

The lying British propaganda is spreading the news that a German submarine torpedoed the Athenia. This ridiculous statement will hurt the British. Took Eyssells to Schwedlers in the evening.

Friday, September 8, 1939

Radio repairs cost $11.25.

Saturday, September 9, 1939

Put up my short wave antenna and went to Lederer of the Kansas City Presse in order to bring him Hoffmann's proclamation.

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Thursday, September 14, 1939

"Special" Steuben meeting. Poor attendance shows present sentiment.

Saturday, September 16, 1939

At Schwedlers in the evening. Special committee for Steuben Fund.

Sunday, September 17, 1939

Russian army enters Poland. Visited Beffert (?) and Stauch in the morning. (Steuben Fund).

Tuesday, September 19, 1939

Went to Riedels. Received $15 for Steuben Fund.

Wednesday, September 20, 1939

In the evening went with Schwedlers to Bauer, Stolz, and Kirchlenz (?) to collect for the Steuben Fund.

Thursday, September 21, 1939

Today Eyssells received some printed matter—Hitler's Reichstag Speech—from Munich sent September 4. Wrote to Clark, Truman, Bell, and Shannon in Washington re- [fol. 320] garding the arms embargo. Renewed loan at the Produce Exchange Bank.

Friday, September 22, 1939

Received telegram from Bobby that she wants to come back and needs $600. With these six hundred dollars I found that it is is difficult to find a friendship which goes above a hundred dollars.

I do not like the fact that Bobby wants to come back now. It is dangerous and, considering what might happen here, it is not a good idea either.

Monday, September 25, 1939

Went to Schwedlers to play cards. During my absence Martini came and brought $13. Took my radio set back because it does not work right. Those fellows won't do anything though.

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Monday, October 2, 1939

Went to Schwedlers in the evening to play cards. Gus Schwedler told me that M. Lederer of the Kansas City Presse had telephoned about the Steuben Corner. To Schwedler's answer that they ought to print Hermann Kudlich's article which he had sent to the Steuben News and which they had not printed last week, he made evasive

replies and mentioned the difficult times. Thus the Kansas City Presse indicates that they do not like to print the Steuben Corner articles in spite of the fact that the responsibility is clearly that of our unit because of its signature. I remarked to Gus Schwedler that this is an extremely serious case and that it must be taken up in the Steuben Society without fail. Such a case of cowardice on the part of a German paper is unheard of. The amazing part of the matter is that apparently the Schwedlers do not seem to be all excited about it.

Tuesday, October 3, 1939

(Last paragraph) . . . I spoke to Gus Schwedler on the phone about the Steuben Corner. He said that he had spoken to the editor, Dr. Lederer, and had learned that Peters, the owner, was coming to Kansas City on Wednesday. I am still wondering how this stuff can be submitted without printing the article sent in by us.

Tuesday, October 10, 1939

Was invited to Wickerts for dinner. The Jewish press took the opportunity to call Daladier's speech the expression of the war-mindedness of the "allies."

[fol. 321] Friday, October 20, 1939

In the evening went with M. Eyssell to the August Eyssells for dinner. Helen Eyssell, who had returned from Germany on Wednesday, had much to relate about Germany and especially about Freiburg. It was a very interesting evening.

Sunday, October 22, 1939

Schwedler, M. Eyssell, and I went to M. Stauch for supper. Heard Goebbels' speech against Churchill in which he accused this rascal of having the English ship Athenia, which carried American passengers, blown

up so that the German submarines would be accused of it. English destroyers sank the ship.

Thursday, October 26, 1939

Steuben meeting in the evening. I was surprised when I heard at Schwedlers in the evening that Gus Schwedler had permitted Dr. Lederer to attend the meeting and to talk on the Kansas City Presse. I told Schwedler that this should not be done under any circumstances since Lederer was undoubtedly sent only to spy on us. This actually proved to be a fact, too. As Schwedler went into the Rathskeller with him, he wanted to know how many members we had. According to Schwedler, he was quite taken aback when he was informed that he was not permitted to attend the meeting. At the meeting it was decided to discontinue the Steuben Corner in the Kansas City Presse.

Tuesday, October 31, 1939

Went to the movies in the evening. (Rockhill)x.

Tuesday, November 7, 1939

Sachs visited me at noon. He is finally being transferred to the Wolfermann Store in Oklahoma City. Went to the "Madrid" in the evening.

Tuesday, November 14, 1939

Stayed home in the evening to enjoy my German short wave set. The subject was Soldier-Comrades, and the reception was excellent.

Thursday, November 30, 1939

At the Steuben meeting Gastreich gave a talk on his trip to Europe. It is remarkable how little English he can speak. I took him home after the meeting.

[fol. 322] Wednesday, December 6, 1939

In the afternoon Eyssell told me that he wanted to inform me confidentially that someone had told him that the American Legion had been provoked by me because of my opinion of the Jews. Since he did not want to tell me the name of his informant, I told him that I would have liked it better if he hadn't told me anything about it at all.

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Stayed home in the evening.

Monday, December 11, 1939

Stayed home in the evening. Wrote Steuben letters and read in one of my two books which arrived today ("The Eighth Crusade" by a British staff officer). This came from Germany and the other from the German Library of Information in New York.

Called for my photos at the Plaza.

Monday December 18, 1939

Went to Schwedlers to play cards in the evening. The battleship Graf Spee, which was sunk by its own crew in the harbor of Montevideo yesterday, was the subject of conversation everywhere.

Tuesday, December 19, 1939

When I came home in the evening, I learned that the German Steamer Columbus had been sunk by its own crew. This indicates that Germany is considering all possibilities and will not be careless enough to let German ship material get into enemy hands to be used against Germany.

Stayed home in the evening.

H. C.

Sunday, December 31, 1939

. . . In the evening I was invited to dinner at Schwedlers. Later came the Sitters, Mrs. Wilkie and Miss Suessmatt (?) and Count Raschmer (?). He is a strange example of German aristocracy. He was an officer with the Cuirassiers. His godmother was the Queen of Rumania. His parents were good friends of the Duke of Pless, etc. His wife is the daughter of an American letter carrier. He, himself, is a butler but is supposed to have property in Silesia and Poland. Unusual paradoxes. Went to bed at two o'clock.

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[fol. 323] Monday, January 8, 1940

. . . Went to Schwedlers in the evening to play cards. We had a long discussion about Gastreich and wondered whether his unusual activities "in the interests of" German Americans is due to his stupidity or something else. The conversation developed in connection with a letter from T. H. Hoffmann, the chairman of the Steuben Society, regarding Valentin Peters, the publisher of the Kansas City Presse and Gastreich's superior. According to Hoffmann's description, Valentin Peters is a crafty politician who would sacrifice his countrymen at any time if it would be of personal advantage to him.

Thursday, January 11, 1940

The Steuben meeting sharply illuminated Gastreich's character. As expected, Mr. Gastreich made an angry attack on me personally as an answer to the reading of Theodore H. Hoffmann's letter regarding the Steuben Corner and Valentin Peters. He did this in spite of my remark that the whole thing had nothing to do with him since he had been in Germany at the time. The story seems to be that Gastreich knows very well that Peters and the Kansas City Presse are not exactly innocent but that he has to defend his job and his income. We will have to wait and see what Gastreich will do to bring back the good reputation of the Kansas City Presse. . . .

Tuesday, January 16, 1940

Still no mail from Germany. Read in the paper yesterday that the clipper had been detained in the Azores for three weeks because of bad weather. This explains the irregularity of the mails.

In the evening the August Eyssells came and showed the pictures which Helen Eyssell had taken in Germany. This was arranged chiefly to entertain Henry Hucke who will have to go to the hospital again because his condition has become worse. I also received three copies of "The Case for Germany" today. (Gave Helen Eyssell one to read.)

Thursday, January 18, 1940

This morning we had -11° F., the coldest weather which I have ever experienced here. In the evening on my way home I had a collision with an R. D. Turner, 2906 Holmes, Missouri License #415-022 (1939). Turner was driving west on 29th Street with a speed of at least 30 to 35 miles per hour, and we were driving south on Charlotte Street. I was able to bring my car to a stop within 10 to 15 feet since I had chains on the wheels and was driving only about 17 miles per hour. The other fellow had no chains [fol. 324] and slid at least 60 to 70 feet. He bent my fender and bumper. Turner said he had . . .? . . . insurance.

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Received a letter from Bobby which was postmarked January 6. . . .

(Translator's Note: Although the entries for January 23, 24, and 26 appear to contain nothing of interest, the letters E F are written in in pencil next to those dates. There is nothing to indicate the significance of these letters.)

Thursday, January 25, 1940

. . . Steuben meeting in the evening. Benne (?) said that Schulz did not give up his job voluntarily recently but that he had been discharged because of his pro-German attitude. Received package with the three pajamas. Weight at 8:20 A. M.—198.9.

Saturday, February 10, 1940

Went to Cabin Hall in the evening with M. Eyssell, Fred and Helen Eyssell in order to see the pictures "Furlough on Word of Honor" and "The West Wall." This performance was held by Gastreich to raise funds for needy Germans in this country. . . .

Monday, February 12, 1940

Went to Henry Hucke's funeral in the afternoon. In the evening went to Furrs. Juanita's friend, Jones, wanted to speak to me about an address on Germany next Thursday evening. Since Miss Grunfeld (?) had asked me to

speak on the same subject and since both groups are in Parkville College, I suggested that Jones get in touch with Miss Grunfeld in order to have the two *groups join*. The thing does not interest me very much and if it were not for the fact that it concerns an academic group, I would have declined altogether. H-C.

Wednesday, February 14, 1940

Went to the Turner Hall with Gus Schwedler and Benne in the evening. We went as a committee to meet with the Turner Council and to discuss the

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Turner Council's refusal to promise Vice Consul Gastreich the Turner Hall for the holding of the charity affair for needy Germans in America. The upshot of this was that [fol. 325] the Turners proved themselves to be a frightened and cowardly bunch. The reason which they finally gave for their action was that the film "The West Wall" was a German propaganda film. Gus Schwedler's behavior angered me most of all because he tried to get out of the whole thing and put all the blame on Gastreich. Thank goodness, Benne was not like that and of the Turners, Kettler was not afraid to express his opinion either. Nottberg is a cowardly, lying gossip.

Thursday, February 15, 1940

Went to Parkville in the evening and spoke to about 200 students and teachers on National Socialism. The talk was arranged by the YMCA, the German Club, and the International Relations Club. Took Juanita and Davis home to Furrs.

Sunday, February 18, 1940

Went to Schwedlers for dinner in the evening and then we went to Gastreich's. It was quite boring. Gastreich said that the German Consul General, Dr. Diel (?), would come here from St. Louis soon and that he would give a dinner in his honor.

Monday, February 19, 1940

Went to the District Court as a juror today in the case of a customer versus the Jewish Palace Clothing Store. I was eliminated as a juror . . .

Tuesday, February 20, 1940

Second day in the District Court. Was eliminated again in a damage suit of a woman automobile driver against a truck driver. Two negroes were used as jurors, one of which was apparently an illiterate, or even better, had never driven a car. It is extremely interesting to see the progress of Judaization in this country where even negroes are used as members of juries in spite of the fact that it was a situation involving whites exclusively. Went through the District jail in the afternoon. The prisoners undoubtedly live better than half the American people. At my request, I was dismissed from jury service today.

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Thursday, February 22, 1940

Steuben meeting in the evening. Gus Schwedler was not there because he did not feel well. Following this, Max Riedel and I went to the clubhouse to take part there in the so-called "Round Table" meeting. The "Round Table" is an organization of all German American societies, and this was the first time that the Steuben members had been invited.

[fol. 326] Otto Schmidt, lawyer and "Assistant Federal District Attorney," is the chairman of the Association. I have always suspected Schmidt in his capacity as leader of the German organizations of being more or less of a spy whose job it is to see what goes on in German circles. We Steubens agreed to join the Round Table permanently and in this way it will be possible to watch Schmidt more closely. Perhaps I am allowing my distrust to go a little too far, but at any rate it is better to be careful.

Monday, February 26, 1940

Received two letters from Bobby via clipper. One was under way exactly six weeks and the other one five weeks. The letters had not been censored by the English. Therefore, they had evidently been left lying in Bermuda from four to five weeks in order to show the world: See what we can do! Stayed home at night.

Wednesday, February 28, 1940

Was in the Northeast Power Plant with Swartz today in order to record (take pictures of?) the switching-on of a 2,000 KW (?) transformer with the oscillograph. Stayed home at night.

Saturday, March 2, 1940

. . . Received two calendars from the V. D. A. (German Nationals Abroad?).

Saturday, April 6, 1940

Nothing special. Went to Riedels in the afternoon and gave them one of the two V. D. A. calendars. To Schwedlers in the evening for supper and cards.

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The reception of the German short wave programs is getting considerably better, which is something to be thankful for in view of the present very important events in Europe and in the world. Sumner Welles, Roosevelt's special ambassador, left Germany again yesterday in order to visit his allied friends in Paris and in London. In my opinion this was a thoroughly dishonest chess move and was undoubtedly correctly appraised in Germany.

Monday, March 4, 1940

Bought two little frames for ten cents for the Japanese pictures in the calendar in order to liven up my place a bit. In the evening, went to the Lindbergh—

[fol. 327] Tuesday, March 5, 1940

. . . Filled out an application for membership in the Turnverein. Went to Gastreich's at noon in order to bring him a number of Steuben leaflets.

Wednesday, March 6, 1940

Received letter from Bobby in which she asked me to send $3.00 to the Permit Division in Washington. Stayed home in the evening.

On a German broadcast I heard the story of the bell hanging up at Lloyd's in London which was rung for over

eighty years every time an English ship sank. This has been stopped now. However, "in order not to break tradition" the German radio will continue the ringing of the bell. Stayed home in the evening.

(Translator's note: The last two pages of this book contain the dates of letters sent and received.)

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Diary—Part II

Wednesday, March 13, 1940

. . . I was accepted as a member of the Turnverein. . .

Thursday, March 14, 1940

Went to Steuben meeting in the evening. The discussion was very lively regarding the Turner Hall situation, the so-called "Round Table" organization, and various objections raised by Benne. In my opinion, Benne is not the man I at first took him to be. He is a jackass who blusters about like a bunch of firecrackers. He is the sort of fellow who after having gone forward a step, thinks about it very seriously and then takes two steps backwards as quickly as possible. "Not much good," as one says here.

Took Gastreich home in the evening.

Saturday, March 16, 1940

Letter to Bobby. To Gastreichs in the afternoon to discuss the dinner in honor of Dr. Diel, the German Consul General from St. Louis, who is coming to Kansas City for two days on April 6. . . .

[fol. 328] Sunday, March 17, 1940

Went to Stauch's in the afternoon. I took the Gastreichs in my car and Schwedlers took their friend Kurschus, who returned from Germany recently. It was a warm, sunny day. Listening to the German short wave there, we learned that Hitler and Mussolini were going to meet at the Brenner Pass in a few hours. We also heard one of the fliers who talked about yesterday's attack on the English fleet in Scapa Flow.

Tuesday, March 26, 1940

Took a long walk. From 19th and Campbell I went down as far as the Missouri River Dam, walked along the Dam for four blocks to Holmes and back again in 70 minutes. Went to the Turnverein in the evening. Perspired considerably. Found a letter from Benne in which he announced in a rather impolite way his resignation from the Steuben Society. This was evidently the result of

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the meeting of March 14. Evidently I was not mistaken about this fellow.

Wednesday, March 27, 1940

Was at Sheffield Steel almost all day with Bretschneider and Sherman to install the telemeters again. In the afternoon had an interesting discussion with Mr. Westphal, who is of German descent. "Round Table" in the evening. Took Otto Schmid home and had at least an hour's discussion about Germany, the world situation, etc., in my car and in front of his house.

Saturday, March 30, 1940

Went to Sears Roebuck in the morning to buy a pair of heavy shoes for my walks. Towards evening I went to the Esquire to see "The Blue Bird." At about 9 o'clock I went to Joe Swartz's house where the men from the laboratory were having a stag party. Went home again at 11.

Sunday, March 31, 1940

Took a walk from Swope Park to Dodson and back from 8 to 10. The new shoes behaved very well. Wrote a letter to Bobby in the afternoon and in the evening went to Schwedlers for supper and cards.

Monday, April 1, 1940

Bought three pairs of woolen socks and got blisters on my feet from my new shoes. In the evening went to Stolz and Scholz.

[fol. 329] Wednesday, April 3, 1940

Bought a summer suit. Went to various people in the evening to sell tickets for the Winter Aid affair (Wickert, Schwedlers, Heine, and Riedels). Schwedlers, especially Mrs. Schwedler, were quite annoyed (a little too much annoyed) since, without my knowledge of course, they had already given Gastreich a considerable sum of money. Went to bed at about 10 o'clock.

Thursday, April 4, 1940

Took my longest walk today, down Troost (?) to the Missouri, then over to the A S B Bridge and back on Grand. In the evening I went to the German House for a committee meeting regarding the visit of Dr. Diel, the St. Louis Consul General.

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Saturday, April 6, 1940

Dinner at the Phillips Hotel in the evening. Gastreich had chosen the chief coward George Reinhart as toastmaster. This was done without telling the committee anything about it. Dr. Berd (?) was the other speaker. The man is getting old and his conceit becomes more and more apparent. The committee had also decided to let representatives of the various organizations say a few words about each of their groups. Shortly before the dinner, Gastreich told me that Reinhart had changed this. He asked me to speak. I declined because this would have made it appear as if the whole thing were a Steuben affair.

Monday, April 15, 1940

Went to the Turner Hall in the evening for a meeting of the "Bears" (a men's Turner group). Was accepted in the ranks of the Bears with the name Blitzbear.

Wednesday, April 17, 1940

(Last paragraph) . . . Received another letter from Bobby written in the same vein as all the others. Bobby thinks only of herself; she cannot understand what is going on in the world today. She went to Germany to have

a good time and the war has spoiled her fun. That is why she is dissatisfied.

Friday, April 19, 1940

When I arrived home tonight I found that this diary had been taken out of the secretary during the day and had been put back. Whether this was done for the purpose of reading it I shall probably know by tomorrow night. . .

[fol. 330] Sunday, April 21, 1940

I am convinced now that they are reading my letters and other writings here. I shall have to take precautions therefore.

Took my Sunday morning walk around the airport for about an hour. Stayed home in the afternoon . . .

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Tuesday, April 23, 1940

Today I locked my secretary for the first time and took the key along because I am sure that this has become necessary. In spite of the fact that I have no state secrets to hide, it is an unpleasant feeling to have to live together with people who by their snooping lower themselves to a level usually described as mean and common. At least I am not going to help them with it. I decided to stay home tonight to prepare the subject of my lecture "Sunspots" for next Friday night.

Received a statement of my balance from the Darmstaedter Bank. The letter came via Siberia and Japan and was postmarked March 7, according to which it was on the way 47 days or approximately 7 weeks. Considering the distance, this is comparatively fast. From 200-300 miles per day.

Sunday, April 28, 1940

When I came home from Schwedlers tonight I found that the Eyssells had broken open the secretary. These people have perpetrated an unbelievably mean and dishonest act. . . . If this business of snooping through my

things does not stop soon, I shall have to look for another place. This situation is extremely irritating.

Tuesday, April 30, 1940 H. C.

Went to the Turner Hall for fencing and gymnastics. The success of the German troops in Norway is making a great impression everywhere.

Wednesday, May 1, 1940

. . . Went to a "Round Table" meeting in the evening where I met Val Peters and his son. Peters, of course, is quite full of phrases; however, I think as a German newspaper publisher he speaks quite honestly and does not seem to have sold himself to the Jews. We formed a Press Committee with myself as chairman in order to study the sad press situation, described by Peters, and to see what we can do in order to help the press. Talked with Otto Schmid for awhile. Schmid is hoping for the District Attorneyship of K. C. At present he is handling the case of the various doctors here who are selling narcotics.

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[fol. 331] Thursday, May 9, 1940

Press Committee meeting in Gastreich's office. It is the task of the Press Committee to study the situation of the German press and to attempt to help it. Steuben meeting after this.

Friday, May 17, 1940

Could not go to the Turnverein tonight because Gastreich urgently asked me to come to a meeting to discuss steps to be taken regarding the article in the Kansas City Journal, "Fifth Column Flourishes Here."

The meeting was held in the German House and was attended chiefly by members of the Schubert Choir.

Wednesday, May 22, 1940

Round table meeting in the evening. I learned that I was the only one who had written a letter of protest in the name of his organization (Steuben) to the Kansas City Journal in answer to the brazen agitating article on the socalled Fifth Column activity . . .

Sunday, June 2, 1940

. . . The Bergers, neighbors on the south side, are regular German haters. Recently while I had Germany on the radio the fool slammed the window shut. Recently she asked Mrs. Eyssells just what I was always writing on my typewriter. Impudent rabble is all I can say. . . .

Friday, June 7, 1940

I went to the Turner Hall in the evening. . . . Nottberg introduced me to two young men, Hauswald and Hoffmann, who said they had just come to Kansas City from Los Angeles. The first said that he had come here from Germany in 1929. The other said that he was born in Nebraska and that his occupation was waiter and cook. Hauswald said that he had found employment as a butcher with the Delico Meat Company.

Saturday, June 8, 1940

I went to Gastreichs in the morning where I heard that a policeman had asked for Carl Baumgartner at the German House. We took for granted that

this probably had something to do with the letter of the newspaper committee regarding the hysterical Fifth Column propaganda. In the evening I stopped in at Befferts where I heard the crazy story that Hauser (?) had been arrested and that Scholz had lost his job. Since I [fol. 332] know that both of these men are definitely good citizens, this story seemed unbelievable to me. For this reason I drove right over to Hausers and found that the whole thing was a lie from start to finish. I called up Mrs. Beffert and warned her not to pass on this ridiculous rumor.

After this I went to a meeting of the newspaper committee in the Turner Hall. The two young men, Hauswald and Hoffmann, were in the Rathskeller and went out just before we left the hall. We wondered whether the two might be spies. Gastreich then suggested that we dash over to the German House to drink a glass of beer. It was about 12 o'clock. As we entered the restaurant, we

saw Hauswald and Hoffmann sitting there. The bartender came over to me and after asking me my name, told the story about the policeman. He said that the policeman had had a letter in the German language. I told him that this was probably the letter of the newspaper committee. I also told him that if any other policeman should come, he should refer them to Federal District Attorney Schmid, who could give them information about me as well as the letter.

Friday, June 14, 1940

Meeting of the Turnverein to discuss a $12,000 loan to pay the extra city taxes. The Jewish Government of Kansas City threatened to sell the hall under the hammer if the taxes had not been paid by June 20.

Tuesday, June 25, 1940

Stayed home in the evening. Mrs. Eyssell showed me her Red Cross button which she received for her donation to the Red Cross. This is a fund which is intended exclusively for England and the Jews and, therefore, against Germany. Comment superfluous.

Wednesday, June 26, 1940

Stopped at Riedel's to take him along to the Round Table meeting in the German House. However, he told me that he was too excited because the Jews had started rumors about him that he was a Nazi and that he had been arrested.

At the meeting in the German House, Otto Schmid was absent. Was elected Vice Chairman.

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Sunday, June 30, 1940

Our Steuben Unit met with the St. Louis Unit at the Bagnell Dam. We had a better attendance than St. Louis. Became acquainted with Mr. Kamann. A fine old man. Most of the St. Louis group, however, are more afraid than anything else, especially Kaufler.

[fol. 333] Thursday, July 25, 1940

Steuben meeting. Max Riedel did not come but sent his sons. Gastreich presided. He reported that Schwedler had

declined to go to the film censor, Mrs. Walton. He also spoke somewhat disparagingly about the fact that I had not sent the letter to Mrs. Walton. This fellow will have to be set straight one of these days.

Saturday, July 27, 1940

Took Eyssells to the August Eyssells. It is strange how Mrs. August Eyssell talks about Hitler and Germany—the way most people talk about them here. Even Helen Eyssell, to whom I always thought Germany meant more than just an entertaining place to stay, today made it very evident that she was an "American" girl.

Sunday, July 28, 1940

. . . Went to Riedels. This good man, who was always quite brave in his ideas about Germany, has also become extremely cautious since a Jew in his neighborhood called him a Nazi. I think that his two boys are partly responsible for this.

Saturday, August 17, 1940

Bought an Argus camera at Bernard's on the Plaza.

Wednesday, August 21, 1940

Was arrested for speeding. Went to Scholz in the evening to see his enlarging apparatus.

Saturday, August 24, 1940

Went to Court in the evening. Cost $5.00. Bought enlarging apparatus and other material. Developed pictures.

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Wednesday, August 28, 1940

Meeting of the Round Table in the evening concerning the holding of German Day. Lukewarm sentiment. Otto Schmid comes out openly as an enemy of Germany. Declines to name a committee to investigate the German Day situation. I, as Vice Chairman, am finally empowered to do this.

[fol. 334] Saturday, August 31, 1940

Left K. C. at 4 a. m. Took highway 40 to Columbia . . . short stay in Columbia and Jefferson City. Arrived St.

Louis 12:00. Drove through the East End for about an hour without finding a place to park. Then went to Forest Park and the Botanical Gardens. Arrived in Murphysboro at 5 o'clock.

Sunday, September 1, 1940

Went to Strobels with Alphonse. Drove to Recreation Lake near Carbondale in the afternoon. Played pinochle with Strobels in the evening.

Wednesday, September 4, 1940

Visited Strobels and invited them to come to Gebhards Sunday. Washed the car.

Thursday, September 5, 1940

Patched tube. Played pinochle with Hodges in the evening.

Sunday, September 8, 1940

In the afternoon I took Hedwig and Alphonse to the Grand Tower on the Mississippi. In the evening Mr. and Mrs. "Baer" and Mrs. Karnear (?), the sister of Mrs. Baer, came. The women are Norwegians and Baer is a Jew born in M. whose father came from Strassburg since, according to Baer, he did not want to serve in the German army. In my opinion, the only interest that Baer has in Alphonse is the fact that Alphonse's brother-in-law works for the German Consulate. Alphonse will soon find out what nice people Jews are. I pointed this out to A. Perhaps he will fall for it anyway because another Jew recently intimidated him with a postcard.

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This day brought my vacation at Gebhardts to a close. I liked it quite well. They and their three children are a nice family.

Monday, September 9, 1940

Left Murphysboro at 6 a. m. for Florence and Muscle Shoals. Looked at Wilson and Wheeler dams. Both have been guarded by the army since June and are no longer

open to the public. Actually, there is comparatively little of interest in these much-named dams. The towns are old and dirty, the neighborhood poor, and there is nothing to indicate that much will ever come of the TVA unless its present status can be considered of great importance as most people are led to believe from newspaper descriptions and, especially, Roosevelt's talks. At first I wanted to spend a whole day there but found it a waste of time [fol. 335] so that I started out for Memphis, where I found a fairly old, dirty, and hot cabin, for which they charged me a dollar to stay over night.

Friday, September 13, 1940

Went to 19th and Campbell to buy film and get my photo material. Stayed home in the afternoon and evening, developed pictures of my trip.

Sunday, September 22, 1940

Took a trip through the city with the Amanns and Imys (?) from St. Louis. To Schwedlers in the evening.

Sunday, October 6, 1940

(Paragraph 2) . . . Had a picnic breakfast with Mohringers. I was surprised to learn from them that they are practically through with Gastreichs. Basically, the same story. Sooner or later people learn that Gastreich is only a common egotist who, under the pretext of working for the Germans, uses people only for his own purposes. What these are I do not quite know. . . .

Saturday, October 12, 1940

Had another telephone installed in my room.

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Sunday, October 13, 1940

Gruermanns, Mehringers, and I were in Swope Park at 6 a. m. and took a two-hour walk. Went across the golf course, along the Blue River and back along the railroad. Had breakfast in the park. In the afternoon went to Independence and Liberty with Schwedlers. To Schwedlers in the evening.

Monday, October 21, 1940

Today I noticed that my antenna was damaged. I suspect my neighbors. Those Burgers are just the type of people who are capable of doing something like that. Stayed home in the evening after taking my letter to Bobby to the post office.

Tuesday, October 22, 1940

Went to Schwedlers in the evening to make out address lists for the Congressional Records.

[fol. 336] Thursday, October 24, 1940

Steuben meeting in the evening. We had a pre-arranged debate on the German element in the U. S. A. I represented the anti-German side and Schwedler the German side. The debate was successful because it did not take long to get the entire group interested in the discussion.

Saturday, November 2, 1940

Took a walk to an unusual spot between Birmingham and Liberty Bridge, took pictures. . . .

Wednesday, November 6, 1940

Stayed home in the evening and developed pictures. Eyssells had gone out. Roosevelt was re-elected to the presidency. Comment superfluous.

Thursday, November 7, 1940

Went to the Plaza in the evening. The so-called "surprise preview" was junk. It is interesting to notice how the Jewish film industry presents certain films as patriotic and tries to create the impression that according to "democratic" principles the "people" should get behind their "choice." The

fact that this whole election was bought and was, therefore, nothing but rubbish, apparently does not occur to these replicas of human beings, of which the public is for the most part composed.

Friday, November 15, 1940

. . . When I arrived home at night, Eyssell informed me that his mother wanted to move to St. Louis on December

1 and that, therefore, I would have to move. He gave me the legal notice of two weeks. Very nice of him. This fits very well into the general picture of the Eyssells.

Monday, November 18, 1940

Went to Befferts in the evening. Both are ridiculously primitive and uneducated. They really feel at home in this country just like all other people of their type.

Saturday, November 30, 1940

(Paragraph 2) . . . Anton, my barber, told me that he had a room in mind for me with a certain Mrs. Lodde on 26th and Charlotte. Kettler also called to tell me that he had inquired at Hillers on 41st and Agnes. Hiller, however, is a superpatriot and I don't think it would be wise to move there.

[fol. 337] Tuesday, December 3, 1940

Anton suggested that I move in with him. I promised to come to look at the place in the evening which I did. The house is clean and the room is very nice. There is also a large garage. I decided to rent the room with breakfast for $4.00 per week. $2.00 for the garage at Konigsbauer's. . . .

Thursday, December 5, 1940

Took my clothing to 2530 Charlotte in the evening. . . .

Saturday, December 7, 1940

. . . The name of the people into whose house I moved and whose name I believed to be Anton is really Grusiski (formerly Grusciski). Anton is his first name.

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Saturday, December 14, 1940

Invited Schwedler to a barbecue lunch. Home in the afternoon, and to Mehringers in the evening. Met Mr. Roth there, a German tailor. . . .

Thursday, December 26, 1940

Steuben meeting in the evening. Telephone installed. Learned that the Grushenskis are not citizens. To-bed at 10 o'clock.

Sunday, December 29, 1940

Took my morning walk alone. Saw neither Mehringers nor Gruermanns. Went to Schwedlers in the evening. Listened to Roosevelt's slanderous speech.

Monday, December 30, 1940

Roosevelt's Jewish war talk filled a great many people with war hysteria. Stayed home in the evening. Mailed the cards for the card party on January 11.

Tuesday, December 31, 1940

Hitler's speech, the New Year's address to the German people, was an effective answer to Roosevelt's false and twisted statements. . . .

Tuesday, January 7, 1941 H C

Stayed home in the evening. Lechtenbergs came over to play cards, and I accepted an invitation to join them.

[fol. 338] Thursday, January 16, 1941

In the evening after calling for my radio, I went to Mehringers and then took Mehringer to the Music Hall to attend the meeting of the "America First" Committee. The official speaker was John T. Flynn. According to the K. C. Star 650 people were there. Lubnow (?), Bolker's nephew, seems to be the leader of this organization here.

Wednesday, January 22, 1941

I seem to have been subjected to a sabotage control for the first time today. A few days ago I had examined a few sample lengths of copper

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conductor and found them satisfactory. This copper is intended for war purposes (Lake City). Today, when the copper we had ordered arrived, someone else had to check it again. The reason for this must be that they are checking up on me since I had sufficient time to inspect the order. Second-class citizen? Tried to reach Mehringers on the telephone in the evening but could not get them. Went to the Bagdad.

Thursday, January 23, 1941

There was supposed to be a Steuben meeting in the evening. Except for two Riedels, Schwedler, and myself, no one showed up. The lack of enthusiasm and understanding in this Steuben unit is extremely discouraging.

Friday, January 31, 1941 H C

Ate in the Canton Cafe (?) in the evening. Then killed time in the movies.

Friday, February 7, 1941

Went to Union Station at 7 a. m. to call for Theo. Hoffmann with Gus Schwedler and Max Riedel. Since Hoffmann took the elevator and came out on the other side, we missed him. After about two hours, however, he called Riedel on the telephone. Hoffmann made the Hotel Muhlebach his headquarters. In the evening I met H. at Riedels and together with Schwedler and the three Riedels, we went to the Blue Hills Restaurant on 60th and Troost for supper. After this we went to the Turner Hall where we had a committee meeting. During the course of the conversation, it was mentioned that Gastreich was on the list in Washington as a "Nazi" agent.

Saturday, February 8, 1941

. . . Went to the Hotel Muhlebach to have dinner with Hoffmann. After this we went to Otto Schwedler's and later to Mrs. Benne, who gave H. a donation of $50 for the [fol. 339] SSA (Steuben Society Aid?). Then we went to the Turner Hall where we had supper together; at 8 o'clock we had a meeting. Sorry to say there were only 12 people there. Hoffmann did a good job in that he encouraged the people considerably. After the meeting we had a congenial get-together in the Rathskeller, whereupon I took Hoffmann to Union Station. At 11:55 he departed for Denver.

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Saturday, February 15, 1941

Took Mrs. Grusheski to the market. Bought an RCA Victor course in the Spanish language for $15 and a phonograph turntable for $5.40.

In the afternoon took a walk around the airport with Mehringer and the little boy. To Mehringers in the evening.

Thursday, March 13, 1941

Steuben meeting in the evening. Wichert told us that he had learned that the FBI had made inquiries about him in the neighborhood of his store as to whether he was "subversive."

Sunday, March 16, 1941

Wrote a letter to Marge Cranford (?) in England, in which I sent her a copy of the last two letters from her mother. . . .

Wednesday, March 19, 1941

Telephoned Mehringers in the evening and learned that Meline Mehringer's brother was visiting them. Since Meline invited me to come over, I went there yesterday, stopping off at Gruermanns and Riedels. Mr. Koller, Meline's brother, is 31 years old, single, and a chemist with the National Lead Company in St. Louis. Seems to be a very nice fellow. We sat together until after one o'clock in the morning. . . .

Tuesday, March 25, 1941

This morning I heard the broadcast of the ceremony in conection with Yugoslavia's entrance into the three-power pact in Vienna. The rage of the English and the "Americans" knows no bounds. Now they are trying to present this situation as if it had happened against the will of the Yugoslavian people. In the meantime, the Japanese foreign minister, Matsuoko, left Moscow and is in a special train on his way to Berlin. In the meantime, the English and the "Americans" are gnashing their teeth. [fol. 340] Roosevelt is so enraged that he "froze" the one million dollars which Yugoslavia has here, in spite of the fact that America's funds in Yugoslavia are supposed to be about twenty four million dollars and probably higher. Well, these gentlemen will probably have to suffer more attacks of rage before they finally realize that the world has already passed them by. . . .

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Friday, March 28, 1941 H C

In the morning I went to the Hotel Continental (as did Mr. Bretsch.) and listened to a lecture on Resonance Circuit Transformers. Went to the Gillham (?) in the evening.

Thursday, April 3, 1941

The fellows from the Underground Department were in the lab today. They are a stupid and conceited bunch. They seem to have a particularly patriotic hatred for me. I wouldn't be surprised if this heterogeneous committee were a secret group to watch over me. Went to the Gillham in the evening. Letter to Bobby. Fast day.

Saturday, April 19, 1941

Went to the city in the morning and took the housewife to the market. Sent $3.00 to the Immigration and Naturalization Commission. In the afternoon I developed some more pictures. At 8 in the evening I went to a "stag party" at Harry Sherman's. Welch (?) showed a moving picture depicting his trip to Alaska. It was very interesting.

Sunday, Mary 4, 1941

Listened to Hitler's speech from the Krolls Opera House on 15.2. It was wonderful as usual. The idea of the whole speech was "nothing is impossible for the German soldiers." In the afternoon I went to the Uptown. . . .

Tuesday, May 27, 1941

Went to Riedels in the evening for a meeting of the membership committee. Took Fred Kettler along. George Mehringer told me that Reed wanted to see him in the evening and Walter Riedel was busy so that only Fred Kettler and I were there. Max Riedel also took part in the discussion. Before that we listened to Roosevelt who made another crazy and abusive speech against Germany and the Axis powers in general. Went home at 10:15.

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[fol. 341] Tuesday, June 17, 1941

The whole country is under the influence of the insane actions of the Government in Washington which have the character of wild, unbridled despotism. Practically no German citizen can leave the country. They are held as hostages, say the radio announces. In contrast to this, Germany has always treated Americans with the greatest respect. Went to the movies in the evening.

Friday, June 27, 1941 H. C.

(There is no entry under the above date; only the letters "H. C." appear.)

(Translater's note: The entries for July 2 and 3 are written in Spanish because the writer "wanted to get a little practice in that language." They contain nothing of apparent interest.)

[fol. 342] (Clerk's Certificate to Transcript.)

United States of America,—Sct.:

I, A. L. Arnold, Clerk of the District Court of the United States for the Western District of Missouri, do hereby certify that the foregoing is a full, true and complete transcript of the record and proceedings, as fully as called for in the Designation filed herein and made a part hereof, in the cause wherein the United States of America is Plaintiff and Carl Wilhelm Baumgartner is Defendant, as fully as the same appears on file and of record in my office.

Seal U. S. Dist. Court West. Div. West Dist. of Mo.

Witness my hand as clerk and the seal of said court. Done at office in Kansas City, Missouri, this 4th day of February, A. D. 1943.

A. L. ARNOLD, Clerk,
U. S. District Court
By H. C. Spaulding,
Deputy Clerk

Filed Feb. 6, 1943. E. E. Koch, Clerk.

[fol. 304] (Order of United States Circuit Court of Appeals directing that copies of Exhibits C to F be included in printed record.)

United States Circuit Court of Appeals
Eighth Circuit.

January Term, 1943

Wednesday, February 3, 1943.

Carl Wilhelm Baumgartner, Appellant,
vs.
United States of America, Appellee.

Appeal from the District Court of the United States for the Western District of Missouri.

Now on this 3rd day of February, 1943, on the application of John F. Rhodes, counsel for Carl Wilhelm Baumgartner in the above cause, presents to the Court his application for leave to send appellant's Exhibits C, D, E, and F to the Clerk of the United States Circuit Court of Appeals for printing in the record on appeal without furnishing a typewritten copy thereof, and the Court being fully advised in the premises directs that the Clerk of the United States District Court for the Western District of Missouri send said Exhibits C, D, E, and F of appellant to the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit as a part of the original record on appeal and that he may have the same printed in the printed record on appeal without furnishing a typewritten copy thereof—the original exhibits to be retained by the Clerk of this Court for its use as part of the original record.

February 3, 1943.

Proclamation

Exhibit

REG. U.S. PAT. OFF.

The
Steuben Society of America
Suite 2003
389 LEXINGTON AVENUE
NEW YORK, N. Y.

Proclamation of the Steuben Society of America

In my capacity as National Chairman of the Steuben Society of America, a society of American citizens of Germanic extraction organized in 1919, and in view of the fact that the Steuben Society of America represents thousands of American men and women living throughout the United States, I consider it necessary and in line with the fundamental principles of fair play and free speech to issue the following statement to all members, to the Press and to the Public:

This is the time for all Americans to keep a cool head, steady nerves and a courageous heart.

American citizens of Germanic extraction can be relied upon as a matter of course to observe and obey all the rules of strict and honest neutrality, both by word and action.

The past history of our Country proves conclusively that the Germanic element always could be counted upon to preserve the integrity and independence of the United States.

In the Revolutionary Days, Germans marched 600 miles from Pennsylvania to Boston to help drive the British from our shores — Washington's bodyguard consisted solely of Germans — Steuben, a German, drilled the colonial troops at Valley Forge, became Washington's right-hand man, and helped win the Battle of Yorktown.

In the Mexican War, thousands of Germans enlisted — General Quitman was the hero of Chapultepec.

In the Civil War, thousands upon thousands of Germans rallied to the call of Abraham Lincoln — they saved Missouri and Maryland for the Union — Fifty-two Generals were of German blood — and Mrs. Jefferson Davis said, "Take the Germans out of the Union Armies and we can easily lick the Yankees."

In the Spanish-American War, again we find the same percentage of Germans on the firing line. Remember Schley, the hero of Santiago?

In the World War — a war in which the United States should never have entered — thousands of our sons went forth, even with heavy hearts against their own kin — not one solitary instance of sabotage or spying was proved against any American of Germanic blood.

At the same time, however, we wish to make it clear that we will not tolerate any attempt made by any group, in any way to attack our race and blood, and that we intend to fight with all honorable means at our disposal, any and all propaganda and race discrimination, aimed at our good name

and splendid record of contribution which materially helped to make this country great and powerful.

And we will fight with all honorable means at our disposal, any and all attempts on the part of any and all persons in public office, from the highest office down, or any and all groups who will attempt to drag this country into foreign entanglements, or bring us into foreign wars.

We will fight hand in hand with other patriotic Americans to prevent the flower of our manhood from being slaughtered on foreign soil.

We believe that the future of American youth is on top of American soil, not underneath European dirt.

Americans of Germanic extraction do not want Communism or Fascism, or any other foreign isms in this country.

But we also ask the Government and the Dies Committee to investigate British and French propaganda prevalent in our land.

Let's get the truth about the Carnegie Endowment for International Peace, the Rockefeller Foundation and the Foreign Policy Association.

Let's get the truth about the Alliance Francaise. Have we forgotten that France some years ago set aside a huge fund for propaganda to be used in the United States of America?

What's sauce for the goose, is sauce for the gander.

I ask every American citizen of Germanic extraction to continue to live up to the traditions of this country.

I ask every American citizen of Germanic extraction to be neutral in word and deed.

I ask all American citizens of Germanic extraction to stand together to protest and fight against all attempts to entangle our country with foreign alliances, or to break down our neutrality, all of which would jeopardize the independence of our country and our democratic form of government.

Let us stand united to oppose any and all acts of discrimination against any American of Germanic extraction.

There must be no repetition of 1914 to 1917!

We must not become involved in war!

THEO. H. HOFFMANN,
National Chairman.

Do not destroy!
Pass it on!

For additional copies apply to

STEUBEN SOCIETY OF AMERICA
300 LEXINGTON AVENUE
NEW YORK, N. Y.

(back cover)

Place.....*Date*.....

APPLICATION

To the **Steuben Society of America**

"I hereby apply for membership in your Society, and if accepted, will give my best efforts to the cause."

"I am not a member of any German-American political organization."

Have you ever been a member/proposed in any other Unit?.....

If so, state full particulars.....

Are you a member of any political Club, Society, League or Organization?.....

If so, state name, location and particulars.....

.....

.....

Signature.....

(inside back cover)

Any erroneous information given is sufficient reason for members to be expelled.

Applicant's Name:.....**Citizen?**.....

If naturalized citizen, give date, place and number of issue of naturalization (citizen) paper.

.....

Occupation:.....**Are You of Voting Age?**.....

Home Address:.....**Tel.**:.....

Mailing Address:.....**Tel.**:.....

Born at:.....**Country**.....

Nationality of Father:.....**Mother**:.....

If father or mother are born in the United States, are they of Germanic extraction?.....

.....

Proposed by:.....**No. 2**.....

Recommended by: No. 1.....

Introduction Fee: $ **Elected** **Introduced:**

DEFENDANT'S EXHIBIT

What is The Steuben Society of America

(front cover)

THE
STEUBEN SOCIETY OF AMERICA
SUITE 1003
369 Lexington Avenue
NEW YORK, N. Y.

What is the Steuben Society of America?

The Steuben Society of America is a patriotic, civic and "educational" political society, endeavoring to awaken in the hearts and minds of American citizens of German extraction the necessity for taking a more active part and interest in the political affairs of our great country.

The Steuben Society stands first and last for Americanism in the true sense of the word, and is not affiliated with any Political Party.

Among other things the aims of the Steuben Society are:

Fostering a patriotic American spirit among all citizens.

Guarding our political liberty by maintaining an honest equality of citizenship regardless of the birth, origin or religion of any citizen.

Upholding the Constitution of the United States.

Maintenance of the traditions of our country.

Opposition to alien-influenced government.

Eighteen years have elapsed since our Society was founded. How well we succeeded is attested by the fact that our Society has gained the respect and admiration of both our friends and adversaries and has demonstrated the fact that a very large part of our racials could stand together and were faithful to those who stood by us in our hour of need.

Our battles will be long and hard fought. We are but laying the foundation for the future; a foundation for our children and our children's children. The fruits of our labors will go to our successors.

Our reward is the satisfaction of knowing that we are contributing something to the educational welfare of our racials, and are adding to the greater welfare of our country.

In the Steuben Society we speak the American language because in order to do effective political work, this work must be carried on in the language of our country, also because we want to bring into our ranks our children to whom belongs the future.

We want in our ranks those who realized that our race contributed as much as any other in the formation and development of this, our great country; those who are willing to give service, service in time and in money, to help us fight propaganda in school, college, print and forum which could and would assign us to a secondary rank in the governmental affairs of this country, and we want to make our children proud to be of German stock.

This, indeed, requires disciplined training, and that we are for the first time applying to political education, discussions and lectures in our Council and Unit Meetings. We want to prevent the politicians from offering our votes for sale; we want free discussions by men and women, we want the best of our race to come in and participate in our debate so that we may all learn and become more thoroughly educated politically and have a clearer vision politically. Then we will quickly command respect, without seeking for it, or bragging about our knowledge. And if thus we do our full duty as citizens of this great Republic we will be in a position to demand if necessary, what should be ours, as we will then be a disciplined force on a sound basis, which will be capable of sustained action.

Thus we shall eventually be able to lift politics to a higher level instead of scolding about it; resulting in a square deal to the country of our fathers, an even measure of justice to every other country, and a better and finer United States of America.

We cannot afford to rest on the laurels and achievements of our ancestors. Let us hearken to "Goethe"

"Was du ererbt von deinen Vätern hast,
erwirb es, um es zu besitzen!"

We have work ahead of us; hard work, and for a good cause. The questions of

Establishing the
War Guilt

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Upholding the
"Constitution of the United States" and **"Government by due process of law"**

To fight the spread in this country of
"Communism"

The furtherance of adequate
"Social Security"

For a Constitutional Amendment along the lines of the resolution of Congressman Ludlow known as the
"Peace Amendment" calling for a **"Nation Wide Referendum"** on war

For the strictest possible
"Neutrality Laws" to prevent a small coterie of individuals to affect the policies of our government in favor of, or against any belligerent.

To fight any and all
"Boycotts" against imports from foreign countries with which we are at peace are our immediate problems.

It will be a difficult, but a pleasant task for those who are willing to seek the truth; for those who love their country, and for those who love justice. There must be more charity and toleration. There must be more confidence. When men nourish suspicion they squander their vitality, both of body and soul; when they welcome the promptings of prejudice they rob themselves of the best things of life. Every great enterprise that has endured over a span of time, has been founded upon, and has prospered through the confidence of those it has sought to serve.

The Steuben Society of America also recognizes that Americans of Germanic origin have played an important role in the formation and development of this great nation, and it is our desire to continue this work. This is a nation of immigrants from all parts of the world, who under privation and hardship have helped to build this country; and our Society urges that we zealously guard the liberties which our fathers fought for and achieved and to see that all harmful influences that are not truly American or which seek to undermine our institutions are barred.

Our forefathers in their struggles to establish political liberty set out in deathless documents their grievances and demands. Then, by all the resources of a virile

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Our forefathers in their struggles to establish political liberty set out in deathless documents their grievances and demands. Then, by all the resources of a virile

efficient race, they proceeded to enforce their rights in the face of every obstacle placed in their way by governmental tyranny. The times call for a resurgence of that spirit.

The fundamentals of Steubenism are Duty, Justice, Charity, and Tolerance. These are not only sound Steuben doctrines but the foundation stones upon which our Republic was established. Liberty, equality of opportunity and the equal protection of the law for all creeds, classes, and men and women of all nationalities who come to our shores are not only cardinal American principles, but are expressly guaranteed by the fundamental laws of the land, and this Society stands ready at all times to defend these principles to the utmost. Our Government is not exclusively an English Government, a French, Italian or German Government in the sense that all the good things of the American Republic are for one class alone, or that one class or race may dominate all others in respect of their liberties, rights and privileges, and never will be such a government if the ideals and purposes of our patriotic forefathers, the founders of this Republic are perpetuated.

Ours is a Government as Lincoln declared "Of the people, by the people and for the people." Our democracy cannot endure unless all classes and races are allowed to live and work under the equal protection of the law, and any movement that is calculated to fan and intensify the fires of race hatred will be deprecated and deplored by men who love their country and who want to keep it noble and make its future greater. Let us then be true to the teachings of the founders of this great Republic, and by precept and example, by loyalty and steadfastness, strive for our ideals, ever remembering that the enjoyment and satisfaction come not so much when we have reached our goal, but rather in the struggle and work in attaining it.

If we do these things, we cannot fail, and our future is indeed bright; we will be respected by all, we will be true to the example of Steuben, ever striving to serve for our fellow racials, our Constitution, our institutions, and for our country, the United States of America.

National Council Executive Committee

STEUBEN SOCIETY OF AMERICA
369 LEXINGTON AVE., NEW YORK CITY
Suite 2003

First Edition: January 1, 1930
Second Edition: December 1, 1933
Third Edition: March 1, 1937
(Revised)

(inside back cover)

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If naturalized citizen, give date, place and number of issue of naturalization (citizen) paper

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Home Address: .....**Tel.:**.....

Mailing Address: .....**Tel.:**.....

Born at:.....**Country**.....

Nationality of Father:.....**Mother:**.....

If father or mother are born in the United States, are they of Germanic extraction?.....

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Proposed by: .....

Recommended by: No. 1.....**No. 2**.....

Introduction Fee: $ **Elected** **Introduced:**

(back cover)

Place.....*Date*.....

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"I am not a member of any German-American political organization."

Have you ever been a member/proposed in any other Unit?.....

If so, state full particulars.....

Are you a member of any political Club, Society, League or Organization?.....

If so, state name, location and particulars.....

.....

.....

Signature.....

PROMETHEUS BRINGING THE LIGHT FROM HEAVEN

By courtesy of "Scenes of To-Day"

(front cover)

AIMS AND PURPOSES OF THE STEUBEN SOCIETY OF AMERICA

REG. U.S. PAT. OFF.

Aims and Purposes of the Steuben Society of America

The primary aim of the Steuben Society of America is to arouse citizens of German descent to a sense of their civic and political duties.

The Society had its origin in the event of the World War and those that resulted from it.

It embodies the reaction and rebellion against the unspeakable humiliations and persecutions to which the people of this country of German race were subjected during and after the war.

The founders were men who did not believe in drifting but in doing things.

It is natural that the German-Americans should have tried to adapt themselves to the conditions of the New World that called mainly for intensive effort at economical and material improvement. Into this effort they have put all the perseverance and energy for which the German race is noted.

It may safely be said that they have splendidly succeeded and that they have established a reputation as a conscientious, industrious, law abiding, God fearing people.

There was at no time the shadow of a thought that their neglect of political affairs in the United States might one day be taken advantage of to degrade them in the eyes of their fellow citizens, and of their own children. These unfortunate consequences were due not only to their indifference to their duties as citizens, but also to an insufficient sense of what they owed to preceding generations.

Race pride is an invariable attribute of a genuine patriotism.

The widespread and sustained slandering of the German race and people, through placing so large a part of our citizenry before the pitiable dilemma of being ashamed either of their race or of their country, injured not only the objects of those slanders, but did incalculable harm to all the people of the country through loss in moral sense and spiritual dignity.

There was at no time, there is not now any reason for accepting this dilemma.

The practical achievements in all fields of human endeavor have received recognition from men of all nations. There has never been at any time or in any way the slightest cause for branding the German people as the sole or principal authors of the calamities of recent history. There is no excuse for any one of German blood to conceal or forget or ignore his descent.

Our country's honor is in our keeping. It is not the waving or cheering of the flag that protects this country from shame. This nation was made great not by false pride or jingoistic vanity, or truckling to the slogan "My country right or wrong," but by a sense of duty and responsibility expressed in that other saying by Carl Schurz, "Right or wrong, my country; when right to keep it right, when wrong to set it right."

The immediate future is big with coming events. It is entirely within the choice of the citizens of German descent whether they will again be driftwood in currents set in motion by unscrupulous politicians or captains of their fate.

The members of this Society, loyal citizens of this country offer to the citizens of German descent, an organization dedicated to the task of asserting their rights as citizens, and defending them against the assaults of self-seeking demagogues and of clearing the good name of the race against the aspersions of vulgar and corrupt propagandists.

To this end the Society is conducting a sustained campaign for the truth on all events and problems arising therefrom.

As regards policies we stand on the basis of a broad nationalism. The interests of our country are paramount. We do not ask our statesmen in the defense of those interests to be guided by anything but the same ethical restraint that holds good for the conduct of individuals. We ask them to be leaders of public opinion and not to be subservient to the blind and unreasoning impulses of popular prejudice. To combine soberness of judgment with practical idealism. We desire a temperate and reasoned interpretation of those interests so as to make possible a healthy and peaceful fusion of our divers racial element into a greater and more mature nation.

In accordance with these fundamental ideas we have resolved:

To combat all the malicious and untruthful propaganda which is being carried on, in films, on the stage, in history books, periodicals, and the daily paper.

To keep our members and the public in touch with all publications whose aim is to throw light upon the leading events of the war, and the subsequent historical events, and to keep them informed of the events that are consciously or unconsciously, through bias or ignorance, passed or slurred over in the daily press.

To revive and to keep alive among our members the memory of the achievements of the pioneers of this country, and to enlighten the public on the important part played by the German-American element in the making of America.

To carry on an active campaign for the teaching of the German language and for instruction in German literature so that succeeding generations may profit by and draw inspiration from the great cultural achievements, past and present, of the German people.

To guide our citizens through the intricacies of public policies, to warn them against political intrigues, and to encourage them to active participation in politics and to encourage those who are worthy to aspire to public office and particularly to use our collective influence against all attacks upon the standing and good name of the German race.

In conformity with these aims we have declared ourselves as follows:

Establishing the
War Guilt

Fair and Equitable
Immigration

Opposing the
World Court — League of Nations

Americanizing
History Text Books

Re-instituting the Teaching of the
German Language in Schools and Colleges

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For the strictest possible
"Neutrality Laws" to prevent a small coterie of individuals to affect the policies of our government in favor of, or against any belligerent.

To fight any and all
"Boycotts" against imports from foreign countries with which we are at peace.

We know that there are many that sympathize with and strive earnestly to accomplish the same purposes as we. We wish to remind these, that organized and united efforts are more powerful by far than the separate and unrelated efforts of a much greater number.

In subordinating and co-ordinating their activities with those of the Steuben Society, they will form a body of public opinion whose voice no one can afford to ignore.

We intend to use our influence for no foreign power, but only in strict devotion to the public good and interest.

We have selected General von Steuben as the patron of our Society, because in his life and career he symbolizes the virtues characteristic of the German race. These virtues embodied in him were a signal factor in the ultimate triumph of the American Revolution.

Not by the exalting of our worth, but by the faithful practice of those virtues do we hope to play our part in the political and social life of our country.

STEUBEN SOCIETY OF AMERICA
369 Lexington Ave., New York City
Suite 2003

First Edition:	January 1, 1926
Second Edition:	September 1, 1928
Third Edition:	January 1, 1930
Fourth Edition:	December 1, 1933
Fifth Edition: (Revised)	March 1, 1937

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Proposed by: .....

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If so, state full particulars .....

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If so, state name, location and particulars .....

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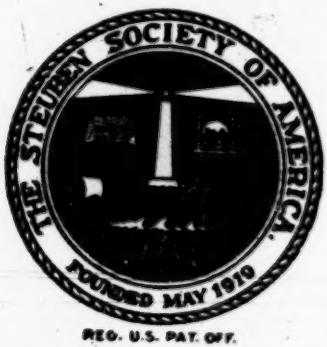
Signature .....

[fol. 308] (Defendant's Exhibit F.)

Constitution and Statutes



Steuben Society of America

Constitution and Statutes
of the
Steuben Society of America

Suite 2003, 369 Lexington Ave.,
New York, N. Y.
1935

Constitution and Statutes
of
The Steuben Society of America

Constitution

Article "A"

The Constitution, Statutes, and Ceremonial of the Society, constitute the supreme law of the organization.

Article "B"

Name

The name of this organization shall be THE STEUBEN SOCIETY OF AMERICA, in honor and commemoration of General Friedrich Wilhelm von Steuben, instructor, disciplinarian, co-organizer and Major-General of the army of the immortal George Washington.

Article "C"

Aims and Purposes

The aims and purposes of this Society are:

Sec. 1. Loyally to support the Constitution of the United States of America by advocating the proper application of its provisions and inculcating the principles underlying true democratic government;

Sec. 2. To quicken the spirit of sound Americanism;

Sec. 3. To aid in maintaining the independence and sovereignty of the United States of America and its freedom from all foreign influence;

Sec. 4. To establish co-operation among its members in the exercise of their civic duties and to encourage among them an active participation in every phase of our national life;

Sec. 5. To promote the welfare and enhance the happiness of its members and their fellowmen;

Sec. 6. To perpetuate itself as a patriotic and fraternal voluntary membership organization and to provide for its government.

Article "D"

Membership

Sec. 1. Men and women of voting age and good repute, who are citizens of the United States of America and who

are wholly or in part of German race or descent, are eligible to membership in the Society.

Article "E"

Organization

Sec. 1. The members of the Society shall be divided into three classes:

a. Members united in local bodies to be known as "Units."

b. Associate Members.

c. Supporting Members.

Sec. 2. In addition to the Units there shall be the following administrative bodies: "District Councils," "State Councils," and a "National Council."

Sec. 3. Junior Leagues and Prospective Citizens Leagues organized by Councils or Units are auxiliaries of the Society, and operate under a charter and Constitution issued by the National Council.

Article "F"

Powers

Sec. 1. The National Council shall be the highest body in the Society. State Councils, District Councils and Units shall be subordinate bodies, and rank in their relations to each other in the order named.

Sec. 2. The Units and Councils shall perform the duties prescribed and exercise the powers conferred by the Statutes of the Society.

Sec. 3. All powers not specifically delegated to the Councils, remain vested in the Units collectively constituting the Society.

Article "G"

Board of Officers

The governing body of each Council or Unit shall be known as the "Board of Officers," whose members are to be elected by the Councils or Units, and who shall perform such duties as are prescribed in the Statutes of the Society and the By-Laws of Councils and Units.

Article "H"

Recall of Officers and Delegates

Sec. 1. Any officer of a Council or Unit and any delegate to a Council or other body may be recalled by the electing body by a two-thirds vote of the members present at a regular meeting or at a special meeting called for that purpose.

Sec. 2. Written notice stating the reasons for the contemplated recall shall be sent by registered mail to the officer or delegate affected at least 20 days prior to the meeting and the members of the electing body shall be notified by mail of the proposed action at least 5 days prior to the meeting.

Sec. 3. The right of recall is vested in the electing body and no appeal to a higher body shall be permissible, provided the mode of procedure as set forth in Sections 1 and 2 of this article has been complied with.

Article "I"

Levy for the Maintenance of the Councils

To defray expenses of the Councils, the Units shall pay to the National, State and District Councils such proportion of introduction fees and membership dues as the Statutes of the Society provide.

Article "J"

Conventions.

Sec. 1. For the purpose of establishing closer contact between the Units, and bringing about an oral exchange of views respecting the general affairs of the Society, policies to be pursued, and measures to be advocated in futherance of the aims and purposes of the Society, a National Convention shall be held at least once every four years, beginning with the year 1924.

Sec. 2. For the purposes set forth in Sec. 1 of this Article the Councils and Units in each state shall hold a State Convention at least every two years, beginning with the year 1924.

Article "K"

Amendments

The Constitution and Statutes of the Society may be amended in the following manner:

Sec. 1. Amendments to the Constitution or Statutes of the Society may be offered in writing at any meeting of any Council, but action thereon shall be taken only at a subsequent regular meeting or at a special meeting called for that purpose, provided the delegates shall have been notified by mail of the intended action at least ten days prior to the meeting. After having been approved by a two-thirds vote of the delegates present, the proposed amendments shall be promptly forwarded to the National Council for submission to the Units in conformity with the provisions of Section 3 of this Article.

Sec. 2. Amendments to the Constitution or Statutes of the Society may be offered in writing at any meeting of any Unit which has been chartered for at least one year, but action thereon shall be taken only at a subsequent regular meeting, or at a special meeting called for that purpose, provided the members shall have been notified by mail of the intended action at least 10 days prior to the meeting. If two-thirds of the members present at a meeting shall have voted in favor of the proposed amendments, such amendments shall be submitted for approval to the next higher Council in jurisdiction which shall take prompt action thereon, proceeding in the same manner as set forth in Section 1 of this Article.

Sec. 3. Amendments proposed in accordance with the provision of Sections 1 and 2 of this Article and forwarded to the National Council, shall be promptly submitted by it for final action to all Units of the Society, who shall vote upon them within sixty days and promptly notify the National Council of the result of the vote. A two-thirds vote of the members of the Units present at a meeting is necessary for adoption.

Sec. 4. If a Unit fails to vote to adopt or reject any such amendments and to make return thereof within the period stated in Section 3 of this Article, the National Council shall have power to deprive such Unit of represen-

tation in the Councils for a period not exceeding six months.

Sec. 5. Amendments to the Constitution of this Society shall be declared adopted by the National Council, and shall become effective, when two-thirds of all Units of the Society have voted in favor of their adoption.

Sec. 6. Amendments to the Statutes of the Society shall be declared adopted by the National Council, and shall become effective, when a majority of all Units of the Society have voted in favor of their adoption.

Sec. 7. Proposed amendments shall not be amended while they are under consideration by the Units of the Society.

Sec. 8. The substance of a proposed amendment which has been rejected by the Units, may not again be submitted within one year from the date on which the National Council declared that the amendment containing such substance was not accepted, nor may such substance be attached to another amendment in the form of a rider.

Sec. 9. The Constitution and Statutes of the Society shall not be suspended for any purpose whatsoever, and shall be amended only in the manner herein provided.

Statutes

Article I.

National Council

Sec. 1. The National Council shall consist of one (1) delegate or alternate from each state having from one to nine Units; two (2) delegates or alternates from each state having from ten to twenty-four Units; three (3) delegates or alternates from each state having from twenty-five to forty-nine Units; four (4) delegates or alternates from each state having fifty to ninety-nine Units; and five (5) delegates or alternates from each state having one hundred or more Units.

Sec. 2. The delegates and alternates to the National Council shall be elected by the State Councils biennially in the month of January from the general membership

in each State, and shall serve for a term of two years, or until the election and installation of their successors.

Sec. 3. In States where there are no State Councils, each Unit shall elect biennially in the month of October one delegate and one alternate to a convention to be held in the month of December, for the election of a delegate or delegates, and an alternate or alternates to the National Council.

Sec. 4. Alternates shall serve only during the disability or absence of the respective delegates.

Sec. 5. The National Council shall meet at least once a year.

Article II.

State Councils

Sec. 1. Subject to the approval of the National Council, a State Council may be formed in any State having three or more Units, and all Units located therein shall be obligated to join it.

Sec. 2. State Councils shall be composed of one delegate or alternate from every Unit in the State. In States having District Councils, the Chairman and Secretary of each District Council shall also be members of the State Councils; such Chairman and Secretary of a District Council shall not participate in the election of delegates and alternates to the National Council.

Sec. 3. Delegates and alternates to State Councils shall be elected annually in the month of December and shall serve for a term of one year, or until the election and installation of their successors.

Sec. 4. Alternates shall serve only during the disability or absence of the delegates.

Sec. 5. State Councils shall meet at least four times a year.

Article III.

District Councils

Sec. 1. District Councils may be formed by three or more Units, subject to the appro. l of the next higher council in jurisdiction.

Sec. 2. Each Unit shall elect one delegate to the District Council for every twenty-five (25) members in good standing.

Sec. 3. Delegates to the District Council shall be elected annually in the month of December and shall serve for a term of one year, or until the election and installation of their successors.

Sec. 4. The territory of a District Council shall be determined by the next higher Council in jurisdiction, with due regard to combining Units in political subdivision, and all Units located in such territory shall be under the jurisdiction of said District Council.

Sec. 5. District Councils shall meet at least once a month.

Article IV.

Duties and Powers of Councils

Sec. 1. It shall be the duty of the Councils:

a. To promote the growth and welfare of the Society within the territory under their jurisdiction.

b. To supervise the work of subordinate bodies.

c. To make, amend, or repeal by-laws, rules, orders or regulations, consistent with the Constitution and Statutes of the Society, for the proper administration of their affairs, subject to changes if ordered by the next higher body. By-laws shall be submitted to the next higher Council for approval, and are not in effect until approved.

d. To act as a Court of Appeals with respect to decisions, rules, regulations, matters of grievance and complaints of whatsoever character of any body or member subordinate to it, appeals on all questions to lie from the lower to the next higher body, the decision of the National Council to be final.

e. To study the important questions of the day and impart to subordinate bodies the result of their deliberations.

f. To co-operate with other Councils or subordinate bodies in all questions affecting joint interest.

Sec. 2. The National Council shall have power to grant charters to all subordinate bodies, to suspend them, and to revoke their charters, in conformity with the provisions of the Constitution and Statutes of the Society.

Sec. 3. In States in which no subordinate Councils exist, the National Council shall perform their duties and functions, unless otherwise provided for in the Constitution and Statutes of the Society.

Sec. 4. The National Council shall interpret the Constitution and Statutes of the Society, and its decisions shall be final.

Sec. 5. State and District Councils hereafter to be formed shall not be deemed duly established and shall not be recognized until a charter shall have been granted to them by the National Council.

Sec. 6. To insure the prompt transaction of the Society's business, the National Council shall have the right to delegate any of its administrative powers to its Board of Officers, or to an Executive Committee, or to any other committees chosen from its membership.

Sec. 7. The Councils shall have the right to employ any member of the Society.

Sec. 8. Each District Council shall appoint an Inspector, whose duty shall be to visit Units and report on the observance of the laws, ceremonial and rules of the Society. No criticism of an adverse nature shall be made by the Inspector during his visit to the Unit, and he shall make his report to the Board of Officers of the District Council in writing. All action resulting from such reports shall be taken in the name of the District Council. The Inspector shall be a delegated member of the District Council.

Article V.

Units

Sec. 1. The Units of the Society shall be formed and work temporarily under a dispensation issued by the next higher Council in jurisdiction.

Sec. 2. After the expiration of three months from the date of such dispensation a charter shall be granted by

the National Council upon recommendation of the Council in jurisdiction.

Sec. 3. New Units may be formed under a dispensation granted by the Council in jurisdiction, either by a committee appointed by such Council for the purpose, or by individual organizers authorized to act on behalf of said Council, but no Unit shall be formed with a membership of less than fifteen.

Sec. 4. Newly formed Units may elect a temporary Board of Officers without regard to the provisions of Article XVII of the Statutes, which Board shall hold office until the annual election in December, unless the members decide by a majority vote to replace the temporary Board by a permanent Board at an earlier date.

Sec. 5. Units shall hold at least two regular meetings in every month, except during June, July and August when it shall be optional for Units to hold only one meeting each month. Any regular meeting may be omitted if it fall on a holiday or on the eve of a holiday.

Sec. 6. Units may adopt, amend and repeal by-laws, rules, orders or regulations consistent with the Constitution and Statutes of the Society for the proper conduct of their affairs, subject to changes if ordered by the next higher Council. By-laws shall be submitted to the next higher Council for approval, and are not in effect until approved.

Sec. 7. Visiting members may participate in the discussions, but are not allowed to offer or second resolutions and motions, nor are they allowed to vote.

Sec. 8. Within three months after date of dispensation units shall select a name subject to the approval of the National Council.

Article VI.

Special Meetings

Sec. 1. Special meetings of Units, or Councils, may be called, on due notice, by the Chairman, or a majority of the Board of Officers; and must be called by written direction of as many members as the statutory quorum necessary for such body provides.

Sec. 2. Special meetings shall, if possible, be held in the regular meeting place; the purpose of the meetings shall be set forth in the call, and no other business may be transacted at such meetings.

Sec. 3. Motions or resolutions at special meetings require a two-thirds vote of the members present for adoption.

Article VII.

Admission to Membership

Sec. 1. Applications for membership in a Unit must bear the signature of the applicants and the personal endorsement of three members in good standing, but one endorsement shall be sufficient at the formation of a Unit.

Sec. 2. Application for membership should be made to the Unit located in the village, town or city in which the applicant resides.

Sec. 3. If an applicant, for valid reasons, cannot attend the Unit located within the village, town or city in which the applicant resides, such applicant may apply for membership in any other Unit, provided his or her eligibility is certified to by the Unit in the village, town or city in which the applicant resides, at a regular meeting and said Unit shall issue its certificate of finding within 30 days.

Sec. 4. If no Unit exists in the village, town or city in which the applicant resides, the applicant shall be eligible in any Unit to which application is made.

Sec. 5. Applications for membership shall be read in open meeting, and brought to the attention of the members in the meeting notices.

Sec. 6. Before action is taken by a Unit on applications for membership, they shall be referred to a Committee on Applications, consisting of not less than three members, for investigation and report.

Sec. 7. In case applicants for membership, owing to lack of acquaintances, find it difficult to secure the three endorsements required, the Committee on Applications, after due investigation, is empowered to approve their applications.

Sec. 8. At the next or second next regular meeting of a Unit following the presentation of the applications, the names of the candidates favorably reported shall be read by the Secretary, and the balloting may then proceed in conformity with the following rules, which shall be announced by the Chairman before the vote is taken.

Sec. 9. In the event that the proposer of an applicant for membership shall not be satisfied with the rejection of said applicant by the Committee on Applications, or if said Committee fails to report within thirty (30) days, such proposer may propose his or her applicant in open meeting and the procedure of balloting shall be the same.

Balloting on Applicants for Membership

1. Candidates may be voted upon singly or in groups.

2. Ballots shall be taken by means of slips of paper, upon which the voting member shall write the word "YES" if he or she decides to vote for the admission of all candidates. Intending to vote against a candidate or several candidates, he or she shall write the word "NO" opposite the name of the candidate or candidates to whom objection is made.

3. Blank ballots as well as ballots cast contrary to the preceding paragraph, shall be declared void.

4. Ballots shall be deposited unfolded, face downward in the ballot box.

5 Candidates shall be declared rejected:

a. If five (5) negative votes are cast when the attendance of voting members does not exceed fifty (50).

b. If eight (8) negative votes are cast when the attendance of voting members is from fifty-one (51) to one hundred and fifty (150), inclusive.

c. If ten (10) negative votes are cast when the attendance of voting members exceeds one hundred and fifty (150).

6. Membership in the Society shall not be deemed complete until the candidate shall have been formally introduced. The introduction of the candidate shall take place

at a meeting held subsequent to his or her election, unless a Unit by a majority vote consents to have the ceremony performed at the session at which the balloting occurred.

7. In case of urgent necessity candidates for membership may be elected and introduced at the meeting at which their application is read, provided the members present have consented to this procedure by a two-thirds vote.

8. If by reason of physical disability an applicant is unable to attend a meeting of a Unit for the purpose of being introduced, then in such case, upon application by the chairman of such Unit, its Board of Officers may grant permission to the Chairman of such Unit to appoint a "Committee of Three" with power to introduce such applicant at his or her residence.

9. No candidate may be introduced unless the introduction fee has been received by the Secretary.

Article VIII.

Officers

Sec. 1. A member who is nominated for an elective position, or holds an elective or appointive salaried office in the Federal, State, County or Municipal Government (not including educational and civil service positions) shall not be eligible as a member of the Board of Officers of a Unit, as a delegate to the District, State or National Councils or as a member of the political committee of a Unit; nor can a member retain his office on the Board of Officers of a Unit, or as a delegate to the District, State or National Councils, or as a member of the political committee of a Unit, if nominated, elected or appointed to such Federal, State, County or Municipal office.

Sec. 2. The officers of the Councils and Units shall be the following:

1. Chairman,
2. First Vice Chairman,
3. Second Vice Chairman,
4. Third Vice Chairman,
5. Secretary,
6. Financial Secretary,

7. Treasurer,
8. First Trustee,
9. Second Trustee,

to constitute together, and to be known as, the "Board of Officers."

Sec. 3. The Chairman shall appoint the following officers:

a. Tiler
b. Steward
c. Master of Ceremonies

to be known as appointive officers, but who shall not be members of the "Board of Officers."

Sec. 4. State and District Councils initially composed of less than nine members, may be governed by a Board of Officers consisting of not less than three members, viz., Chairman, Secretary, and Treasurer.

Sec. 5. The members of the Board of Officers of all bodies in the Society shall serve for the term of one year, or until the election and installation of their successors.

Sec. 6. Vacancies in the Board of Officers due to death, disability, resignation or recall shall be filled for the unexpired term at an election held at a regular meeting of the Council or Unit concerned; such purpose to be stated in the regular meeting notice.

Article IX.

Duties of Officers

Sec. 1. The duties of the Officers and of the Board of Officers of Units and Councils shall be those assigned to them by the Unit or Council, and by common parliamentary and business usage and practice. In addition thereto:

Sec. 2. The Secretary shall countersign all documents and vouchers signed by the officers of the Unit or Council, and take care of the documents of the Unit or Council.

The Secretaries of the Units of the Society shall report quarterly to all Councils and such reports shall reach the Secretaries of the Councils during the first two weeks of January, April, July and October. Such reports shall

show the number of members in good standing, suspended, expelled, resigned, and of new members, together with a statement of the income and expenditures of the Unit and a statement and payment of the amount due to the Councils as its share of the Unit's introduction fees and membership dues.

Sec. 3. The Treasurer shall receive, safeguard, manage and disburse the funds of the Unit, or Council.

Sec. 4. The Financial Secretary shall collect all introduction fees and membership dues, keeping a proper record thereof and issue receipts therefor. He shall make an accounting to the Treasurer of all moneys received, paying the same to the Treasurer at every meeting, and receiving proper receipt therefor.

Sec. 5. The Trustees shall be in charge of all balloting in the Unit or Council. They shall canvass the ballots, and announce the results of the voting to the Chairman and members.

Sec. 6. The Tiler shall attend at the outer door at all meetings, and permit no one to enter not entitled thereto, nor without previous announcement through the Steward, and permission of the Chairman. He may require all members to show their membership cards, and shall cause all members to register their names in the book kept for that purpose.

Sec. 7. The Steward shall have charge of the inner door and see that no member enters or leaves the room, during

a. The opening or closing ceremonies
b. The reading of the minutes
c. Balloting
d. Introduction of Candidates.

He may require all members to show their membership cards.

Sec. 8. The Master of Ceremonies shall properly introduce all visiting officers of other Units or Councils; shall have charge of the introduction ceremonies, and deliver the charge after every introduction.

Article X.

Committees

Sec. 1. The following Standing Committees shall be appointed by the Chairman of the Unit or Council with the advice of the respective Board of Officers:

1. Political Committee
2. Finance Committee
3. Organization and Membership Committee
4. Publicity and Educational Committee
5. Entertainment Committee
6. Auditing Committee
7. Visiting Committee
8. Committee on Applications.

Sec. 2. Each Committee shall be composed of not less than three members.

Sec. 3. The Auditing Committee shall be composed of three members who are not members of the "Board of Officers."

Sec. 4. The Chairman of a Unit or Council may appoint such special committees as he deems necessary or required by Unit or Council.

Sec. 5. The Chairman of a Unit or Council is ex-officio, a member of all standing and special committees.

Article XI.

Duties of Committees

Sec. 1. The duties of the Committees of Units and Councils shall be those assigned to them by the Unit or Council, and by common parliamentary and business usage and practice.

Sec. 2. The Finance Committee, in addition to its regular business, shall prepare a budget of income and expenditure at least every six months.

Article XII.

Order of Business

Sec. 1. The order of business for Units and Councils shall be as follows, with the exception of numbers 4 to 17 which may be transposed with the consent of the body.

1. Opening
2. Calling Roll of Officers
3. Reading of minutes of previous session or sessions
4. Balloting on Candidates
5. Introduction of Candidates
6. Reports of Sickness and Distress
7. Reports of Standing Committees
8. Reports of Special Committees
9. Reports of Delegates
10. Communications
11. Reading of Bills.
12. Applications for Membership
13. Unfinished business
14. New business
15. Good and Welfare
16. Report of Financial Secretary
17. Report of Treasurer
18. Closing.

Article XIII.

Quorum

The quorum for Councils and Units in session shall be:

If the membership is	Membership	Quorum
" " " "	3	2
" " " "	4 to 5 incl.	3
" " " "	6 " 7 "	4
" " " "	8 " 9 "	5
" " " "	10 " 14 "	6
" " " "	15 " 29 "	7
" " " "	30 " 59 "	9
" " " "	60 " 89 "	12
" " " "	90 " 119 "	15
" " " "	120 " 149 "	18
" " " "	150 " 179 "	21
" " " "	180 " 210 "	24
" " " "	211 or more	30

Article XIV.

Transaction of Business

Sec. 1. The business of Councils and Units shall be transacted in compliance with parliamentary practice, according to Robert's Rules of Order.

Sec. 2. Excepting in the cases of elections, voting on any and all questions in Units, Councils or Committees may be conducted either viva voce or by secret ballot, but must be conducted by secret ballot if one-third of the members so desire.

Article XV.

Revenues

A. Introduction Fee and Dues

Sec. 1. The introduction fee for membership shall be not less than Three Dollars ($3.00), payable before introduction; the annual dues of members shall not be less than Three Dollars ($3.00), payable semi-annually or annually in advance; dues to be computed to June 30th or to December 31st, exclusive of the month of introduction.

Sec. 2. A member of a Junior League or Prospective Citizens League of the Steuben Society of America joining the Steuben Society and having been at the time of application for such membership a member in good standing of either of the Leagues for at least one year, shall not be required to pay an introduction fee; and the introducing Unit shall not be required to pay to the Councils the special introduction-tax of $1.50 for such new members as provided for in Article 15-B of our Statutes.

Sec. 3. The National Council shall furnish for all Units membership cards of uniform design, the color of which shall be changed annually. They shall be issued by the Financial Secretaries of all Units to members in good standing.

Sec. 4. Newly formed Units shall pay to the Financial Secretary of the Council under whose supervision the organization is perfected, One Dollar and Fifty Cents ($1.50) for each charter member, and no charter shall be issued before this first payment shall have been made.

B. Levy for the Maintenance of the Councils

Sec. 5. To meet the expenses of the Councils the Units shall pay taxes as set forth in Section 6 of Article fifteen as follows:

Sec. 6. The moneys levied shall be as follows:

a. Units under the direct supervision of the National Council shall pay to the Financial Secretary of the National Council for every member in the Unit in good standing the sum of One Dollar ($1.00) per year per member, and in addition thereto for each new member introduced since the last report One Dollar and Fifty Cents ($1.50).

b. Units under the direct supervision of a State Council shall pay for every member in the Unit in good standing the following taxes:

To the Financial Secretary of the National Council the sum of One Dollar ($1.00) per member per year, and in addition thereto One Dollar ($1.00) for each new member introduced since the last report, and

To the Financial Secretary of the State Council the sum of Fifty Cents (50c) per member per year, and in addition thereto, Fifty Cents (50c) for each new member introduced since the last report.

c. Units under the direct supervision of a District Council, and having a State Council, shall pay for every member in the Unit in good standing the following taxes:

To the Financial Secretary of the National Council the sum of One Dollar ($1.00) per member per year, and in addition thereto for each new member introduced since the last report the sum of Seventy-five Cents (75c), and

To the Financial Secretary of the State Council the sum of Fifty Cents (50c) per member per year, and in addition thereto, for each new member introduced since the last report the sum of Fifty Cents (50c), and

To the Financial Secretary of the District Council the sum of Twenty-five Cents (25c) per member per year, and in addition thereto for each new member introduced since the last report, the sum of Twenty-five Cents (25c).

d. Units under the direct supervision of a District Council, and not having a State Council shall pay for every member in the Unit in good standing the following taxes:

To the Financial Secretary of the National Council the sum of One Dollar ($1.00) per member per year, and in addition thereto the sum of One Dollar and Twenty-five Cents ($1.25) for each new member introduced since the last report, and

To the Financial Secretary of the District Council the sum of Twenty-five Cents (25c) per member per year, and in addition thereto for every new member introduced since the last report the sum of Twenty-five Cents (25c).

e. The payments to the various Councils shall be divided into four equal parts and be paid quarterly in the first half of the months of January, April, July and October and accompanied by reports issued by the National Council for that purpose.

Sec. 7. Moneys due from Associate and Supporting Members shall be collected by the National Council, Fifty per cent. (50%) to be retained by the National Council and Fifty per cent. (50%) to go to the Unit in jurisdiction.

Sec. 8. In and during the absence of such a Unit in jurisdiction, the moneys received from Associate and Supporting members shall go to the National Council.

Sec. 9. Units and Councils may accept such voluntary contributions of moneys and other gifts, as may be made for the general purposes of the Society, with the proviso that gifts to which onerous conditions are attached, must be rejected.

Sec. 10. The National Council shall have the control of supplies as in its judgment it may wish to control, such as insignia and emblems for the various Units and subordinate Councils.

Sec. 11. No other assessments shall be permissible within the Society.

Sec. 12. The National Council shall waive the taxes due the different Councils from newly organized Units for a period of six (6) months following their organization.

C. Levy for the Maintenance of a National Council Bulletin to Be Known as the Steuben News:

Sec. 13. Every member shall pay in addition to the regular dues the sum of One Dollar ($1.00) per year for which a copy of the Steuben News shall be mailed monthly to every member, provided, however, that where there are two or more members of the same family only one copy of the News shall be furnished one member of such family and only one copy charged for.

Sec. 14. Such sum of One Dollar ($1.00) per year as provided for under Section 13 of subdivision C of Article 15 shall be payable in manner prescribed by each unit.

Sec. 15. Units shall pay to the Financial Secretary of the National Council for every member in the Unit coming under the provision of Section 13, subdivision C, Article 15, the sum of One Dollar ($1.00) per year, payable quarterly in the first half of the months of January, April, July and October accompanied by reports issued by the National Council for that purpose.

Sec. 16. Secretaries of Units shall supply the National Council with a complete list of the names and addresses of all members of the respective Unit and shall every three months in conjunction with the quarterly report supply the National Council with such changes in the members and addresses as may be necessary to have a complete and correct record.

Sec. 17. Units may elect to pay the subscription for the News for their entire membership out of any of their funds.

Article XVI.

Finances and Properties

Sec. 1. All retiring members of Boards of Officers of all Units and Councils shall turn over all properties and records of the Society in their possession.

Sec. 2. All fixed disbursements of Units and Councils shall be stated and described in the By-laws of these bodies, and shall be made without further authorization

by their Treasurers. Other disbursements up to the amount of

a. Twenty-five Dollars ($25.00) for a Unit,

b. One hundred Dollars ($100.00) for a District Council,

c. Two hundred and fifty Dollars ($250.00) for a State Council,

d. Five hundred Dollars ($500.00) for the National Council

must have the consent of the Board of Officers. Disbursements of larger amounts than herein stated, must have the consent of the Unit or Council obtained by motion and majority vote.

Sec. 3. Units may compensate their Secretaries and Financial Secretaries for their services within the body, but such compensation in each case shall not exceed ten per cent. (10%) of the introduction fees and membership dues received.

Sec. 4. Treasurers and Financial Secretaries of Units and Councils shall be properly bonded.

Sec. 5. No Unit or Council shall have power to loan any of its funds to any of its members.

Sec. 6. All vouchers for the payment of all bills shall be signed by the Secretaries and Chairmen of Units and Councils.

Article XVII.

Elections

A. Units

Sec. 1. The annual election of the Boards of Officers of Units, Delegates to the District Councils, and Delegates and Alternates to the State Councils, shall be held at the first regular meeting in the month of December of each year.

Sec. 2. At any regular meeting of a Unit held during the month of October of each year a Nominating Committee shall be elected consisting of five (5) members

in good standing, on which not more than two members of the Board of Officers shall serve, which committee shall prepare lists of candidates to be announced at the first regular meeting in the month of November, and thereupon to be displayed conspicuously in the meeting room.

Sec. 3. At the second regular meeting in the month of November of each year, any ten (10) members in good standing may present their own lists of candidates, personally signed by the nominators, which shall also be announced and displayed equally as well in the meeting room. At this meeting any member in good standing, shall also have the right to nominate a candidate or candidates from the floor, if duly seconded, and such names of nominees shall also be announced and displayed equally as well in the meeting room.

Sec. 4. The Secretaries of the Units shall announce the names of all candidates and the offices for which they are nominated, in the call for the first regular meeting in December at which the election will take place, and shall cause a sufficient number of ballots for use at the election to be prepared under the direction of the Board of Officers.

Sec. 5. At any regular meeting held in the month of April, July and October of each year, the Units shall elect an additional delegate to the respective District Council for every twenty-five (25) members in good standing gained since the last election of Delegates; and in case of a reduction in representation made necessary by loss or transfer of members, the Units shall withdraw at any one of the meetings above mentioned, in any manner they may deem expedient, the number of delegates to the respective District Council in excess of the representation to which they are entitled.

Sec. 6. After having been granted a charter, newly formed Units shall elect delegates and alternates to State Councils and delegates to the District Councils at any of the meetings mentioned in Section 5 of this Article. Delegates and alternates so elected shall serve for a term expiring at the end of the calendar year, or until the election and installation of their successors.

B. Councils

Sec. 7. Meetings of the State and District Council for the election of Boards of Officers shall be held in the month of January of each year on the call of the respective Council or the next higher Council in jurisdiction issued not later than ten (10) days prior to the meeting.

Sec. 8. Meetings of the State Councils for the election of Delegates and Alternates to the National Council shall be held biennally in the month of January on the call of the State Council or the next higher Council in jurisdiction, issued not later than ten (10) days prior to the meeting.

Sec. 9. Meetings of the National Council for the election of its Board of Officers shall be held in the month of March of each year on the call of its Secretary, issued not later than thirty (30) days prior to the meetings.

Sec. 10. Nominations for all officers in District, State and National Councils, to be filled for complete terms, or for unexpired terms in case of vacancies, shall be made by a Nominating Committee, elected by majority vote, but any other member in good standing shall have the right to nominate a candidate or candidates for such offices from the floor, if duly seconded. Elections shall be held at the same meeting at which the nominations are presented.

C. General Provisions

Sec. 11. At all elections the candidates receiving the majority of votes cast shall be declared elected, with the exception of the election of the delegates of Units to District Councils, in which case a plurality vote shall decide.

Sec. 12. All elections within the Society shall be by secret ballot, either written, typed or printed, uniform in size, color and form; such ballots shall be provided by the Secretaries of the respective electing bodies. It shall be permissible, however, that in the absence of opposition, candidates may be elected in all bodies by acclamation, provided a majority of the members present declare themselves in favor of this mode of procedure.

Sec. 13. The supervision of elections, the counting of the votes, and the announcement of the result, shall be left to the Trustees, or, in their absence, to two members to be appointed by the Chairman, who shall declare the successful candidates elected, so that their names may be duly verified and recorded in the minutes by the Secretary. The ballots cast shall be preserved in the files of the Council or Unit.

Sec. 14. The formal installation of the elected Officers of the Units shall take place at the first meeting held in the new calendar year. The formal installation of the elected Officers of the District, State and National Councils shall take place after the election at the meeting held for elections.

Sec. 15. If by reason of increase or decrease in the number of Units in a State an adjustment in the representation in the National Council becomes necessary, the respective State Council, or the delegates or alternates chosen by the Units in the State, as provided for in Article I, Section 3 of the Statutes, shall be convened as soon as practicable for the purpose of either electing an additional delegate or delegates, or an additional alternate or alternates to the National Council, or withdrawing the number of delegates or alternates in excess of the representation to which the State is entitled, as the case may be. The term of additional delegates or alternates to the National Council so chosen shall expire simultaneously with that of the delegates and alternates elected biennially under the provision, Article I, Section 2 to the Statutes.

Sec. 16. Vacancies in the Delegations to Councils, or in the Board of Officers of Units and Councils, due to death, resignation or recall, shall be filled for the unexpired term at an election held at the next regular meeting of the electing body or at any special meeting held for the purpose, provided however, that due written notice of each contemplated election shall have been given in the call to the members.

Article XVIII.

Transfers

Sec. 1. Any member in good standing who for valid reasons desires to be transferred to another Unit, shall

apply to the Secretary of the Unit with which the member is affiliated for a Transfer Card, which shall be issued to him together with a copy of the original card for the receiving body.

Sec. 2. The Treasurer of the transferring Unit shall refund to every transferred member the unexpired proportion of membership dues paid in advance.

Sec. 3. The Unit to which a member wishes to be transferred, shall have the right to receive or reject the transferring member by a majority vote.

Article XIX.

Associate and Supporting Members

Sec. 1. For the purpose of extending the influence of the Society to such sections of the country where the formation of Units does not appear feasible, and of establishing contact with citizens of German descent residing in distant places, with a view to forming new Units the future, a class of members to be known as Associate Members, shall be created.

Sec. 2. Upon proper qualification and payment of annual dues in the amount of Two Dollars ($2.00) applicants for Associate Membership shall be admitted to the Society by the National Council which shall issue to them a Certificate of Associate Membership.

Sec. 3. Citizens in sympathy with the aims and purposes of the Society, but disinclined to take part in the activities of the Units, may upon proper qualification join the Society as Supporting Members in consideration of an annual contribution of Five Dollars ($5.00) or more. They shall receive from the National Council a Certificate of Supporting Membership.

Sec. 4. Associate and Supporting Members shall not enjoy the rights and privileges of members of Units, but receive such literature on public questions and information respecting candidates for public office as the Society may from time to time disseminate.

Article XX.

Judicature

Sec. 1. Members are not in good standing when they are six months in arrears in the payment of membership dues, or when they have failed to meet within three months, without good cause, such other financial obligations as they may have contracted with the Society, its Councils or Units. They shall be so notified by the Financial Secretary of the body concerned, and shall be restored to good standing when the obligation is met.

Sec. 2. Members who have failed to meet their financial obligations, as set forth in Section 1 of this Article, within three months from the date of notification by the Financial Secretary, may be declared suspended.

Sec. 3. No member or officer of a Unit or Council when not specifically so instructed or authorized, may describe or discuss controversially, or in any other manner whatever, in the public prints, the affairs of the Society or those of any of its members, Units or Councils. Infraction of this rule shall be deemed "Conduct unbecoming a Member."

Article XXI.

Trials

Sec. 1. A member of the Society may be placed on trial in the Unit or Council with which he or she is affiliated for "Conduct unbecoming a Member," who is charged

(a) with having violated the Constitution and Statutes of the Society or By-Laws of the body of which he or she is a member; or

(b) with having wilfully disregarded any valid rule or regulation issued by the Unit or a superior body, or their officers or duly instituted agents; or

(c) with having violated the dictates of good conduct as a citizen, individual, and member of the Society; or

(d) with having, without authorization, entered into agreements with any outside organization, individual or

individuals, respecting matters involving the Society or any of its bodies; or

(e) with having trafficked with his membership for personal gain to the detriment of the Society; or

(f) with having secured membership in the Society through misrepresentation; or

(g) with having been convicted of a felony while a member of the Society.

Sec. 2. Trials of members shall be conducted in accordance with the "Code of Procedure" herein stated.

Sec. 3. Charges against a member of the Society involving "Conduct Unbecoming a Member," shall be examined and adjudged by a Jury elected for that purpose in executive session of the Unit or Council of which the accused is a member, and in which the accusation is made.

Sec. 4. A member of one Unit may bring charges against a member of another Unit only through the District Council in jurisdiction when both, relator and respondent, belong to Units under the jurisdiction of the same District Council. When the Units involved are not within the jurisdiction of the same District Council, the State Council shall have jurisdiction in the matter and shall initiate the proceeding against the respondent. When the Units involved are not within the jurisdiction of the same State Council, the National Council shall have jurisdiction in the matter, and shall initiate the proceedings against the respondent.

Sec. 5. The Jury shall consist of three (3) members. When two Units are involved, one member of the Jury shall be elected by the Unit of the relator; one member of the Jury shall be elected by the Unit of the respondent, and the third member of the Jury shall be elected by the next higher Council in jurisdiction; it is understood, however, that the member of the Jury elected by the Council in jurisdiction must not be a delegate from the Units of either the relator or respondent.

Sec. 6. Councils and Units shall have power to suspend members for just cause after trial, in conformity with the "Code of Procedure" as herein set forth.

Sec. 7. A member found guilty of "Conduct unbecoming a Member" may be expelled from the Society by the National Council.

Article XXII.

Appeals

Sec. 1. Members having been suspended or expelled after trial, must be so informed within thirty (30) days by the Secretary of the suspending or expelling body. Within sixty (60) days of the date of such notice, any person believing that the manner of procedure has not been in accordance with the Constitution or Statutes may appeal to the next higher Body by filing a notice of appeal with the Secretary of the Body, which suspended or expelled him or her, and mailing a copy thereof to the Secretary of the next higher Body. If the latter confirms the verdict of the lower Body, the aggrieved may, in like manner, appeal to the next higher Body or Bodies, the decision of the National Council to be final.

Sec. 2. If a higher Body should reverse the decision of the enacting Body, the opinion so rendered shall be communicated to the National Body, and if approved by the latter, it shall order the immediate re-instatement of the aggrieved.

Article XXIII.

Suspensions and Revocations of Charters

Sec. 1. The power to suspend subordinate Councils and Units for just cause, after the offending body shall have been given an opportunity to offer its defence, either orally or by the submission of briefs, shall rest only with the National Council.

Sec. 2. The National Council is empowered to suspend a Unit if it has neglected or refused to pay to the National, State or District Council its proportion of introduction fees and membership dues, as provided in the Constitution and Statutes of the Society; or if it has failed or refused to carry on its work in conformity with the Constitution and Statutes, the Ceremonial and tenets of the Society.

Sec. 3. Suspension of a Council or Unit may be followed by a revocation of its charter by the National Council, if the offending body has not after the expiration of one month from the date of notice duly given, removed the cause for such suspension.

Sec. 4. If the membership of a Unit falls below fifteen (15) members in good standing, it shall, upon complaint to the National Council made by any Council, Unit, or individual member, or upon request of the Unit itself, forfeit its charter. The members in good standing of any defunct Unit may join other Units through transfers issued by the National Council, State Councils, or District Councils.

Article XXIV.

Conventions

Sec. 1. The National Convention shall be composed of the Board of Officers of the National Council, and one delegate or alternate from each State Council, and one delegate or alternate from each Unit. In the absence of the delegate, the alternate shall enjoy all the privileges of the delegate.

Sec. 2. The National Council shall fix the time and place for National Conventions, issue the call for them at least sixty (60) days before the date set for the Conventions, and attend to all details in connection therewith.

Sec. 3. A Special National Convention shall be called by the Board of Officers of the National Council within sixty (60) days after the receipt of a written request signed by a majority of the members of the National Council, or upon a written request of a majority of the Units in good standing.

Sec. 4. The State Convention shall be composed of the Board of Officers of the State Council, and one delegate or alternate from each District Council and one delegate or alternate from each Unit. In the absence of the delegate, the alternate shall enjoy all the privileges of the delegate.

Sec. 5. The State Council shall fix the time and place for State Conventions, issue the call for them at least

thirty (30) days before the date set for the Conventions, and attend to all details in connection therewith.

Sec. 6. A Special State Convention shall be called by the Board of Officers of the State Council within thirty (30) days after the receipt of a written request signed by a majority of the members of the State Council, or upon a written request made by a majority of Units in good standing in such State.

Article XXV.

Fiscal Year

The Fiscal Year of the Society shall be identical with the Calendar Year.

Article XXVI.

Language

The official language of the United States shall be the official language of this Society and its Councils and Units.

Article XXVII.

Enacting Clause

The Statutes of the Steuben Society of America heretofore in effect, are hereby repealed, and the foregoing amended statutes of the Steuben Society of America are hereby adopted and declared to be in full force and effect upon adoption by a majority vote of all the Units of the Society.

[fol. 309] (Statement of Points Relied Upon.)

In the United States Circuit Court of Appeals for the Eighth Circuit.

Carl Wilhelm Baumgartner, Appellant,
No. 12,525. vs.
United States of America, Appellee.

The Appellant states the points upon which he intends to rely upon the appeal in this action are as follows:

That the United States District Court for the Western Division of the Western District of Missouri erred in the

conclusions of Law and Decree entered in this case as a result of which it was ordered that the Order of said Court made September 26, 1932, admitting Carl Wilhelm Baumgartner to citizenship in the United States be canceled and set aside, and that Carl Wilhelm Baumgartner be directed to surrender his Certificate of Naturalization to the Clerk of the Court of the Western District of Missouri, and that said Carl Wilhelm Baumgartner be restrained and enjoined from claiming any right, [provilege], benefit or advantage whatsoever under his Certificate of Naturalization; and that the costs be assessed against him.

JOHN RHODES,
Attorney for Appellant.

Bowersock, Fizzell & Rhodes,
of Counsel, 2500 Fidelity Bldg.,
Kansas City, Missouri.

Service acknowledged this .... day of January, 1943.

M. M. MILLIGAN,
United States District Attorney.
By Richard K. Phelps, Ass't.

(Endorsed): No. 12,525. Filed in U. S. Circuit Court of Appeals on February 6, 1943.

[fol. 310] Designation of Portions of Record To Be Printed By The Clerk.

In the United States Circuit Court of Appeals for the Eighth Circuit.

Carl Wilhelm Baumgartner, Appellant,
No. 12,525. vs.
United States of America, Appellee.

Appellant designates the following portions of the record to be printed by the Clerk in the above entitled action:

(1) Original Petition.

(2) Answer.

(3) Appellant's (Defendant's) Exhibits A, B, C, D, E, F and G.

(4) Appellee's (Plaintiff's) Exhibits 1, 2, 3, 4, 5, 6, and 9, (Exhibits 7 and 8 are the original diary written in German. Ex. 7 and 8 not to be printed, but to be delivered to the Circuit Court of Appeals. Exhibit 9 is translation into English).

(5) Memorandum opinion, findings and conclusion and Decree.

(6) Notice of Appeal.

(7) Extension of time for filing record on appeal.

(8) Bond on Appeal.

[fol. 311] (9) Narrative statement of the evidence in the case, with which is, filed herewith, two copies of the transcript of the evidence.

(10) This Praecipe.

JOHN RHODES,
Attorney for the Appellant.

Bowersock, Fizzell & Rhodes,
of Counsel, 2500 Fidelity Building,
Kansas City, Missouri.

Service acknowledged this 30 day of January, 1943.

M. M. MILLIGAN,
United States District Attorney,
By Richard K. Phelps, Asst.

(Endorsed): No. 12,525. Filed in U. S. Circuit Court of Appeals on February 6, 1943.

[fol. 338] IN UNITED STATES CIRCUIT COURT OF APPEALS,
EIGHTH CIRCUIT

No. 12525

CARL WILHELM BAUMGARTNER, Appellant,

vs.

UNITED STATES OF AMERICA

(Appearances of counsel omitted in printing)

[fol. 339] ORDER OF SUBMISSION—May 10, 1943

This cause having been called for hearing in its regular order, argument was commenced by Mr. John Rhodes for appellant, continued by Mr. Maurice M. Milligan, United States Attorney, for appellee, and concluded by Mr. John Rhodes for appellant.

Thereupon, this cause was submitted to the Court on the printed record and the briefs of counsel filed herein.

[fol. 340] IN UNITED STATES CIRCUIT COURT OF APPEALS,
EIGHTH CIRCUIT

No. 12,525

CARL WILHELM BAUMGARTNER, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for the Western District of Missouri

Mr. John Rhodes (Messrs. Bowersock, Fizzell and Rhodes were with him on the brief) for appellant.

Mr. Maurice M. Milligan, United States Attorney (Mr. Richard K. Phelps, Assistant United States Attorney, was with him on the brief) for appellee.

Before Sanborn, Woodrough, and Riddick, Circuit Judges

OPINION—September 11, 1943

RIDDICK, Circuit Judge, delivered the opinion of the Court:

This is an appeal from a judgment of a federal district court setting aside a previous order of the court admitting

the appellant, Carl Wilhelm Baumgartner, to citizenship, and cancelling his certificate of naturalization. The action [fol. 341] is brought under the Nationality Act of 1940, 54 Stat. 1137, 1158, 8 U. S. C. A. § 738. The allegations of the complaint are that, at the time he took the oath of allegiance to this country, the appellant reserved his allegiance to the country of his birth, the German Reich, and did not in good faith renounce that allegiance nor assume, without reservation, the obligations and responsibilities of American citizenship.

The trial court found as a fact that at the time the appellant took the oath of allegiance to this country he accepted as sound and believed to be righteous the principles of government then advocated and thereafter put into practice by Adolph Hitler, and that his real loyalty was to those principles, which the court found to be diametrically opposed to those of the government of the United States. The court found that appellant's oath at the time of his naturalization that he renounced all fidelity to the German Reich and that he would bear true faith and allegiance to the Constitution and laws of the United States was falsely made. On these facts, the court concluded as a matter of law that the order admitting the appellant to citizenship and the certificate of citizenship granted him were obtained by fraud.

For reversal, the appellant contends that the court erred in the findings of fact and conclusions of law stated above.

Appellant was born in Germany on January 20, 1895. At the age of 19, after graduation from a German high school, he enlisted in the German army. He served on the western front in World War I, until his capture by the English in April 1917 after he had attained the rank of second lieutenant in the field artillery of the German army. Following his capture, he was taken to England where he remained a prisoner of war until 1919. On his return to Ger- [fol. 342] many, he entered the University of Darmstadt, where he continued his studies until the summer of 1925, graduating with a degree equivalent to that of electrical engineer granted by American universities.

After his marriage in Germany in January 1927, appellant came to this country, arriving at the port of New York on the 9th day of February, 1927, where he was lawfully admitted. On the 14th day of June, 1927, he executed his declaration of intention to become a citizen

of the United States. On the 16th day of May, 1932, he filed his application for naturalization which was granted by a federal district court on the 26th day of September, 1932. The present proceeding was brought on the 21st day of August, 1942.

In August 1927 appellant was employed by the Kansas City Power and Light Company, and he has remained continuously in the employment of that company, residing in Kansas City, Missouri, where he was joined by his wife in September 1927. Their three children were born in Kansas City. After her arrival in this country, appellant's wife filed a declaration of her intention to become a citizen, but never pursued the matter to a conclusion. At the time of the trial appellant's family was in Germany, where, appellant testified, they had gone for the purpose of visiting his wife's parents, intending to remain for a period of six months or one year. After their arrival in Germany, the present war began, and, although appellant's wife wished to return to this country, appellant concluded that his family would be as safe in Germany as here. Because of the dangers of the return trip, as well as because of the expense, they have never returned.

At the trial the Government offered the testimony of expert witnesses concerning the principles of government ad- [fol. 343] vocated and established in Germany under Adolph Hitler. No attempt was made by the appellant to deny the exposition of the philosophy of the government in force in Germany under Hitler and the National Socialist Party. The other evidence for the Government consisted of testimony of numerous acquaintances and associates of the appellant. The greater part of their testimony related to statements of appellant, hostile to this country and favorable to Germany, made throughout the period beginning after his naturalization and extending into the summer of 1941. There was also received in evidence a diary which appellant kept and in which he made frequent entries over a period beginning in 1938 and ending in July 1941.

According to the witnesses for the Government, appellant repeatedly expressed his disapproval of the manner in which the Government of this country was conducted. His immediate superior in the Kansas City Power and Light Company testified that within a day or two after appellant was employed by that concern he began to talk about Germany and the form of government existing there. This

was in August 1927, years before appellant's naturalization. Appellant at that time expressed great admiration for and interest in the movement then represented by Hitler. His comparison of Germany and this country was so persistent and so unfavorable to the latter that it was necessary to transfer him from the department in which he was originally employed to another, in order to avoid trouble with other employees.

When Poland was invaded by Germany, appellant declared that Germany was justified in the invasion as it was necessary to protect the Poles from England. He took the same position with reference to Belgium, Czechoslovakia, Austria, and Norway. He expressed the opinion that it would be better for the United States to be gov- [fol. 344] erned by Germany than by the English, under whose domination he insisted this country was. On one occasion, in 1938, he said that, if this country were run by Adolph Hitler, it would be a great deal better country. He said that there was no doubt but that Hitler would rule this country some day and make his home in New York. He maintained that regimentation under the Nazis was superior to democracy in this country. He ridiculed the American form of government and praised that in Germany under Hitler, declaring he was for Hitler 100 per cent. Expressing his opposition to the United States entering the war in Europe, he said it should make no difference to us in the final outcome if we were governed by Germany, as we would merely substitute that control for the control of the English, whose pawn this country was. He maintained that the democracies were on the way out. He said: "* * * look at the American Army, look at the German Army; we go places now and the day will come that Germany will be the dominant war power and then America has to listen to Hitler."

Appellant began keeping a diary on December 1, 1938, and the entries were made frequently until June 27, 1941. Some of the typical entries in the diary follow:

December 22, 1938, "The only ones who have any ideas here are the Jews and their ideas are vile, mean, and malicious." On the same day, he noted that the answer of the American Government to the German protest against what he called the "common insults" of Mr. Ickes was so arrogant and brazen that it must "make the United States

more unpopular and despised, not only in Germany but in the entire world, than it already has been without this."

January 4, 1939, "The speech was a horrible mixture of war agitation and laughable talk about the freedom of press, speech, etc., which this country allegedly has and [fol. 345] which has to be protected with guns." Appellant was referring to the speech of the President of the United States delivered to the Congress.

February 14, 1939, "Today Zeglin came through Kansas City on his trip to the German Consulates in the West. He is attached to the Consulate General in New York now. * * * It is Zeglin's task to see that the Consulates prevent German citizens from joining political organizations." The proof shows that Zeglin was a representative of the German government under Hitler. Appellant met him on a visit to Kansas City and spent the evening with him and took him to the bus station on his departure.

February 25, 1939, referring to a meeting of German-Americans which he attended: "This Mr. Lagna opened the meeting with the German national anthem, whereupon everyone naturally arose and assumed the usual German stance with the arm extended to give the National Socialist greeting."

March 2, 1939, the appellant attended a meeting in Kansas City. An assistant to the United States District Attorney was among those present. Appellant wrote in his diary with reference to this attorney, "I think this fellow is a spy who tells the authorities everything that is going on in German-American circles and who has set himself the task of seeing to it that the German herd of people continues to travel in the right direction." There are numerous entries in the diary in which appellant expressed the belief that persons attending meetings of German-American citizens were spies. In referring to the same attorney following another meeting of a German-American society, appellant noted in his diary that the district attorney "came out openly against Germany." Later he wrote that he had joined an association of all local [fol. 346] German-American societies in order to keep a closer watch on this employee of the Department of Justice.

March 15, 1939, following the seizure of Czechoslovakia by the Germans under Hitler: "The Jewish-American-English fortress in the heart of Central Europe has fallen. A terrible defeat for the above named powers who will prob-

ably have a difficult time recovering from this", and on February 19, 1939, referring to the same incident, appellant said: "The English-American Jewry has had its trump card turned up, and its main trump has been taken away." Of one of his German-American acquaintances, he wrote in his diary on March 29, 1939, he "is a good fellow and a good German who has not been Americanized, that is, ruined."

April 22, 1939, he entered in his diary the following comment concerning a speech of a German student: "One cannot blame him for being so enthusiastic about the new Germany and for speaking so disdainfully about America in spite of the fact that he is probably acting contrary to instructions." April 28, 1939, "Got up at 4:30 to hear Hitler's speech. There are no words to describe how wonderful it was." September 3, 1939, "The German short wave station is a blessing." November 14, 1939, "Stayed home in the evening to enjoy my German short wave set. The subject was Soldier-Comrades, and the reception was excellent." January 16, 1940, "I also received three copies of 'The Case for Germany' today."

June 25, 1940, after an acquaintance had showed appellant her Red Cross button received for her donation, the appellant wrote: "This is a fund which is intended exclusively for England and the Jews and, therefore, against Germany. Comment superfluous." July 27, 1940, appellant again noted in his diary his surprise at the reactions of a German-[fol. 347] American family to world events. He concluded with this note: "Even Helen Eyssell, to whom I always thought Germany meant more than just an entertaining place to stay, today made it very evident that she was an 'American' girl." And concerning another family of German-Americans, on November 18, 1940, his diary carried the following entry: "They really feel at home in this country just like all other people of their type." December 31, 1940, "Hitler's speech, the New Year's address to the German people, was an effective answer to Roosevelt's false and twisted statements." In connection with Yugoslavia's entrance into the three-power pact in Vienna, the diary on March 25, 1941, contained this comment: "The rage of the English and the 'Americans' knows no bounds", and concluded, "Well, these gentlemen will probably have to suffer more attacks of rage before they finally realize that the

world has already passed them by." May 4, 1941, "Listened to Hitler's speech * * *. It was wonderful as usual. The idea of the whole speech was 'nothing is impossible for the German soldiers'." May 27, 1941; "* * * we listened to Roosevelt who made another crazy and abusive speech against Germany and the Axis powers in general."

As early as December 1, 1938, it appears from appellant's diary that he was influential in preventing the Steuben Society, an organization of German-Americans, to which he belonged, from protesting against the persecution of Jews in Germany. He was of the opinion that things happening in this country were "a thousand times worse" than the so-called persecution of Jews in Germany. The diary contains frequent expressions of appellant's animosity to the Jewish race. The idea that the German treatment of the Jews was right and justified was expressed more than once. February 6, 1939, the entry in the diary reveals that he had [fol. 348] met a German-American citizen, who expressed his disapproval of the treatment of the Jews in Germany. Appellant noted: "It is difficult for me to overcome my antipathy for this man. * * * With respect to world events he is so naively egotistical that events in Germany which appear to threaten his safety and comfort here in the United States, even to the slightest extent, are most sharply criticized by him."

December 11, 1939, the appellant noted in his diary that he stayed home to read two books, one from Germany, and the other from the German Library of Information in New York.

Appellant denied categorically that he made statements showing disloyalty to this country. He attempted to explain the entries in his diary which he could not deny. The diary had been kept in the German language. Appellant contended that the translations given in evidence were not always accurate and did not truly express the real thought written by him in the German language. Concerning some of the entries which could not be explained, appellant said that they were the result of his understanding of events at the time he wrote them. He admitted that many of the conclusions expressed in his diary were mistaken, if the information on which they were based was erroneous. With reference to some of the entries, his explanation amounted

to nothing more than a retraction. He asserted that he had been misquoted or misunderstood by many of the witnesses who testified against him. He admitted that he retained a deep affection for the land of his birth. He insisted that the true intent of his statements concerning Germany and Hitler was not to indicate a want of allegiance to the United States, but to express his fervent wish that Germany might become again a prosperous and respected nation. He re- [fol. 349] called the days of his youth in Germany before the first world war as a golden age, the happiest days of his life. The terrible economic conditions which prevailed in Germany following the Treaty of Versailles made a deep impression upon him. The information which came to him was that Adolph Hitler had succeeded in leading the German people out of these difficulties and establishing a stable government. On that premise, he thought Hitler worthy of his admiration, as well as the admiration of all other people. He insisted that he took the oath of allegiance to this country with full understanding of what he was doing, without any reservation whatever, and that, since he took the oath, he had, in his own estimation, been a loyal citizen of this country, willing, if called by the military, to take up arms against the German nation. He said that following the declaration of war by this country he reversed his attitude and urged full support of the United States by all naturalized citizens. Seven acquaintances of appellant testified that he was a man of good moral character, and, as far as their observation went, a good citizen.

An order of naturalization of an alien is a judgment and, like other judgments of courts of record, is not lightly to be set aside. *Tutun* v. *United States*, 270 U. S. 568; *Schneiderman* v. *United States*, —— U. S. ——, 63 S. Ct. 1333, 1335. But a judgment of naturalization differs from the common run of judgments in that it is not one vindicating an existing right, but a judgment granting a right which did not exist prior to its pronouncement, and which the court had no power to grant except upon full and complete compliance by the alien with every condition imposed by the act authorizing the grant. The principles of *res adjudicata* do not apply, therefore, as against the statutory provision for review and revocation of a judgment of naturalization. *Maney* v. *United States*, 278 U. S. 17, 22, 23.

[fol. 350] The duty of full compliance with every condition precedent to the right of naturalization rests upon the

alien applicant and upon no one else. If one requirement for naturalization is more important than another, it is the requirement of an allegiance to this country at the time of naturalization which is full and complete and without reservation. What that allegiance is, only the alien can know, but he is bound to know. The great importance of the proceeding to the United States and the fact that only the alien can know what his real allegiance to this country is compel the conclusion that, if the alien mistakenly swears to an allegiance which he does not possess or which perhaps, for reasons overlooked by or unknown to him at the time of his naturalization, he can never possess, he has failed to satisfy this requirement for his admission to citizenship. It is the fact of the alien's allegiance to this country at the moment of naturalization and not his belief concerning it upon which the right to naturalization depends. *Schwinn* v. *United States*, 9th Cir., 112 F. 2d 74, *aff'd.* 311 U. S. 616; *United States* v. *Zgrebec*, 38 Fed. Supp. 127; *United States* v. *Moskowitz*, 39 Fed. Supp. 989; *United States* v. *Herberger*, D. C., 272 Fed. 278; *United States* v. *Mickley*, 44 Fed. Supp. 735.

In an action to vacate a judgment of naturalization on the ground that it was obtained by fraud, the burden is upon the United States to prove the charges of its complaint by evidence which is unequivocal, clear, and convincing. There are cases holding that the United States must prove the fraud charged virtually beyond a reasonable doubt. *United States* v. *Sharrock*, D. C., 276 Fed. 30. Fraud is never presumed, and a judgment is attended by a presumption of validity. But such a proceeding is civil and not criminal in character, and, where fraud is charged by reason of the falsity of an alien's oath of allegiance, it is not neces- [fol. 351] sary in order for the Government to prevail that it prove the defendant guilty of the crime of perjury or sustain the charge by the weight of evidence required in such cases. Later cases sustain the rule that it is sufficient if the Government sustains its charges by a clear preponderance of convincing evidence. *United States* v. *Rovin*, D. C., 12 F. 2d 942; *United States* v. *Zgrebec*, *supra*; *United States* v. *Marafioti*, 43 Fed. Supp. 45; *United States* v. *Der Manelian*, 39 Fed. Supp. 959; *United States* v. *Ebell*, 44 Fed. Supp. 43; and see *Schneiderman* v. *United States*, *supra*, where the charge was not fraud but that the judgment of naturalization had been illegally procured.

The nar-ow question of fact in the present suit is whether appellant's allegiance to this country at the time of his naturalization was unqualified and unconditional, or, stated another way, it is whether his oath of allegiance was made without any mental reservation whatsoever in favor of the country of his origin, the German Reich. That the question is one of fact can not be doubted. *United States* v. *Krause*, 7th Cir., decided June 30, 1943; *Turlej* v. *United States*, 8th Cir., 31 F. 2d 696; *Schneiderman* v. *United States*, *supra*; *United States* v. *Rovin*, *supra*; *United States* v. *Kuhn*, 49 Fed. Supp. 407. The finding of the trial judge upon the question of fact presented is conclusive on this court unless clearly erroneous. Rule 52, Federal Rules of Civil Procedure.

The weight of authority sustains the proposition that the falsity of an oath of allegiance or the absence of unqualified allegiance to the United States on the part of an applicant for naturalization may be established by proof of acts and declarations subsequent to the taking of the oath. *Schurmann* v. *United States*, 9th Cir., 264 Fed. 917; *United States* v. *Tapolcsanyi*, 3rd Cir., 40 F. 2d 255; *Glaser* v. *United States*, 7th Cir., 289 Fed. 255; *United States* v. [fol. 352] *Kramer*, 5th Cir., 262 Fed. 395; *Turlej* v. *United States*, *supra*; *United States* v. *Krause*, *supra*; *Schneiderman* v. *United States*, 9th Cir., 119 F. 2d 500; *United States* v. *Ebell*, *supra*; *United States* v. *Mickley*, *supra*; *United States* v. *Kuhn*, *supra*. And it has been held that since the real facts concerning the alien's state of mind at the time of his naturalization are exclusively within his possession and knowledge, the burden shifts to him, upon proof of acts and declarations subsequent to naturalization which justify the strong inference of disloyalty at the time of naturalization. *United States* v. *Wursterbarth*, D. C., 249 Fed. 908.

Testing the evidence in the light of the authorities which we have discussed, we can not say that the finding of the trial judge that appellant at the time of his naturalization falsely swore to an allegiance to this country which he did not possess is clearly erroneous. The evidence of those who testified for the appellant is of little or no probative value on the question of fraud in his oath of allegiance at the time of his naturalization. Good moral character is not inconsistent with loyalty to the German Reich, nor with the commission of fraud by appellant within the meaning of the act

upon which this proceeding is based. Appellant was the only material witness for himself, and his testimony on the witness stand is in conflict not only with that of numerous witnesses who testified against him, but with many of the statements in his diary.

As a naturalized citizen appellant had the right to oppose the entry of this country into the war against Germany. He had the right to criticise the course pursued by the government of this country with reference to the war in Europe, if he thought that course was wrong or inimicable to the best interests of this country. Naturalization did not require [fol. 353] that appellant surrender his interest in the welfare of his native land, but it did demand that he hold the welfare of his adopted country first. The record before us is as remarkable for its silence concerning any expression by appellant of interest in the welfare of the United States as it is for appellant's declarations on behalf of the German Reich.

Appellant testified that he came to this country because of the terrible inflation prevailing in Germany and because of his inability to earn a living there. He came to this country, by his own testimony, because of the hope that here he could find a place in which to live and earn a living. His hopes were not disappointed. Almost immediately upon his arrival he secured employment for which he was fitted by education and training. He made fair progress in his work and attained a position of comparative prosperity, which, according to his own testimony, would have been impossible of attainment in his native land. He was able to bring over his wife whom he had left in Germany. Here he made his home and reared his family. In such circumstances it would be reasonable to suppose that in a diary which he kept for the purpose of recording his real thoughts concerning events of importance in his life, he should at some time have noted his progress in the land of his adoption and expressed his satisfaction with it. But no where did he mention the United States except to criticise or denounce it. One can not escape the conclusion that the judgments he recorded on world events were not based upon any patriotic desire for the welfare of the United States, but were based exclusively upon an allegiance to his native land which it was impossible for him to surrender. Almost on the eve of the registration of the young men of this country

for military service under the Selective Service Act of 1940, appellant was declaring with apparent satisfaction that Ger- [fol. 354] many would soon be the world's dominant military power and that this country would have to listen to Hitler. And while citizens of the United States, naturalized and native born, were contributing to the Red Cross for the aid of its citizen-army, appellant was denouncing these contributions on the ground that the money realized was to be used against Germany. That it was also to be used in the interest of the United States was a matter of no moment. And, although this case was tried long after the declaration of war between this country and Germany, no evidence was offered at the trial to show that after that declaration appellant at any time expressed the hope that the United States might prevail or that he made any tangible contribution of any kind or character towards the promotion of the war effort.

The trial judge was not compelled to accept as true the appellant's profession of loyalty to this country. We are admonished by Rule 52 of the Rules of Civil Procedure that, in reviewing a finding of fact made by a trial judge, we must give due weight to the opportunity afforded him of judging the credibility of the witnesses. The appellant was not an ignorant immigrant, confused and helpless at his trial. He was a man of more than average education and more than ordinary intelligence, represented by able counsel. The opportunity which the trial judge had to observe him on the witness stand was of peculiar importance in a case of this character where, in the final analysis, the question of fact depended so completely on appellant's knowledge and appellant's testimony.

The judgment appealed from is affirmed.

Dissenting Opinion

Woodbrough, Circuit Judge, dissenting:

I am convinced that the German-born citizen whose appeal is now before us has been deprived of his citizenship, [fol. 355] branded an enemy alien and condemned to internment for the sole and only reason that he dared, before Pearl Harbor, to exercise the freedom of speech guaranteed him by the first amendment to the Constitution of the United States. The agents of the government devised

and prosecuted these proceedings against him solely because of the words, objectionable to administrative opinion, which he then spoke on matters of public interest, and the only testimony they adduced against him consisted of those words spoken or written in his private diary. He believed before Pearl Harbor, as he said, "that it was not good for this country to go to war," and so believing, he spoke in support of that belief—as he had a constitutional right to do in free America.

I believe that constitutional guarantee is not so frail a safeguard that it can be gotten around and destroyed by administrative ingenuity. Surely not by merely casting an attack in court against the man that exercises it in a particular form, or calling the proceedings "equitable". The form of action resorted to in this case to destroy this appellant for speaking out his mind on public questions, and its sufficiency to that end, have been defended with subtle and ingenious arguments, but I am satisfied they are fallacious. The gist, as I see it, is that in actions in this form the "allegiance" of the accused is an issue of fact, and that means, as I take it, the federal district judges have power to look into the utterances of foreign-born citizens arguing public questions to decide as "fact" whether they are true believers in Americanism or tainted with heresy in that field. That is to say that the judges have the same inquisitorial power over the minds of foreign-born citizens in matters political that the Spanish Inquisition had over the human mind in religion. I deny it.

[fol. 356] It matters not what foreign country may be interested in a public question being debated before our people. Our constitutional guarantee maintains inviolate the right of every man to have his say about the public question notwithstanding. That guarantee is the firm rock and foundation on which liberty and freedom in this country are anchored, and it is the duty of every agency of government to defend it. Most of all the judiciary. I like the words in which this appellant exercised his right to speak on the supreme question before the country prior to Pearl Harbor no better than my fellow judges in this case have liked them. I am opposed to, and find it hard to restrain my words against the use that has been made of his spoken words to destroy him.

I think the inquisition which the trial court made into the words spoken by this appellant on the public issue invaded

the man's constitutional immunity. The provision reads: "Congress shall make no laws * * * abridging the freedom of speech," and congress has never attempted to abridge the freedom of speech of naturalized citizens. The courts are equally bound. They exercise their powers through lawful forms of procedure sanctioned by them. If they sanction a procedure to punish a man for speaking his mind on public questions, they unlawfully abridge his freedom of speech. The lawful powers they have in denaturalization proceedings need not be detailed. Such powers can not lawfully be stretched against the Constitution to abridge freedom of speech. In my judgment that is precisely and exactly what has erroneously been done in this case.

The grimness of war hardens us all and we lean to harshness. Maybe normally the fact that this foreign-born appellant took to observing public men and affairs and to thinking about them, and dared to speak out what he [fol. 357] thought, shows Americanization at work in him. He probably wasn't raised that way. Maybe he used to step from the sidewalk and take off his hat to officials. Most likely something changed him before he got to talking that way about the President and how rotten the country's run, and about perfections over there. Of course he had no skill at it. His line of talk was weak. It didn't endanger the country. The zeal to destroy him on account of his speaking was excessive and the record of the trial smacks of hysteria. The trial judge's opinion might even be taken to imply that he believed the appellant to have been generally in favor of putting torches to cathedrals, synagogues, churches, libraries and books; and torture, robbery and murder in cold blood. Not apparently of practicing witchcraft.

After Pearl Harbor appellant was all for our successful conduct of the war and he swears that he is ready and willing to bear arms for this country against Germany or any other enemy. There's no question of his honesty. What I believe to have been mistaken busyness of so many of us non-combatants about mere words spoken in this country of free speech has cost us a soldier, besides breaching the good faith of our country pledged in its grant of citizenship, with all the rights and immunities thereof, to this appellant.

[fol. 358] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

No. 12525

CARL WILHELM BAUMGARTNER, Appellant,

vs.

UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Western District of Missouri.

JUDGMENT—September 11, 1943

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Missouri, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed without the taxation of costs in favor of either party in this Court.

[fol. 359] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 360] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 17, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

APR 20 1944

CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 493

CARL WILHELM BAUMGARTNER,
Petitioner,

vs.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR PETITIONER.

DAVID A. KERR,
HAROLD EVANS,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 493

CARL WILHELM BAUMGARTNER,
Petitioner,

vs.

UNITED STATES OF AMERICA.

BRIEF FOR PETITIONER.

On writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit to review the decision of that Court on September 11, 1943 (R. 338-349) affirming a decree of the District Court of the United States for the Western District of Missouri, Western Division, entered November 11, 1942 (R. 25-27) cancelling a decree of naturalization of the petitioner entered September 26, 1932 (R. 248-251).

I.

Opinions Below.

The opinion of the United States Circuit Court of Appeals for the Eighth Circuit is reported in 138 F. (2d)

29 (C. C. A. 8th, 1943) (R. 338); the opinion of the United States District Court for the Western District of Missouri, Western Division, is reported in 47 F. Supp. 622 (D. C. Mo., 1942) (R. 25).

II.

Jurisdiction.

1. The statutory provision is Judicial Code, Section 240(a), 28 U. S. C. § 347, as amended by the Act of February 13, 1925, Chap. 229, § 1, 43 Stat. 938.

2. The petition for certiorari was filed November 18, 1943, and granted January 17, 1944, in forma pauperis (R. 352) 320 U. S. —, 88 L. Ed. 376 (1944).

III.

Statement of the Case.

Petitioner was lawfully admitted into the United States at the port of New York on February 9, 1927 (R. 243). He filed a declaration of intention to become a citizen of the United States on June 14, 1927 (R. 243-244). On May 16, 1932, he executed and filed his petition for citizenship in the District Court of the United States for the Western District of Missouri (R. 244-247). On September 26, 1932, he signed and took the oath of allegiance as a citizen and Certificate of Citizenship No. 3532623 was issued to him (R. 247-248).

In point of time the next entry on the citizenship record of petitioner is on August 21, 1942, approximately ten years after citizenship was granted, when the government, pursuant to the provisions of the Nationality Act of 1940, Section 338, 54 Stat. 1158 (8 U. S. C. § 738) sought to have that citizenship revoked. The complaint (R. 1-4),

to which there was attached an affidavit of one J. W. Menzie (R. 4-22), alleged that fraud was practiced at the time of gaining citizenship, i. e., September 26, 1932, in that petitioner did not, when taking the oath of allegiance, abjure all allegiance to the Third German Reich and all others except the United States of America and was not attached to the principles of the Constitution of the United States, and therefore his citizenship was illegally procured. On October 26, 1942, petitioner by his answer specifically denied all allegations against his good faith and loyalty contained in said complaint and affidavit attached thereto, and under oath reasserted his adherence to the United States of America, its Constitution, laws, and principles (R. 22-25). After hearing, cancellation of petitioner's Certificate of Citizenship was on November 11, 1942, decreed by the District Court, which decree was on September 11, 1943, affirmed by the Circuit Court of Appeals for the Eighth Circuit. This Court granted certiorari and allowed petitioner to proceed in forma pauperis.

Briefly, the District Court (R. 25) and the Circuit Court of Appeals (R. 338) decided that despite petitioner's unblemished record and good conduct at all times, his reaffirmation of adherence to the Constitution and his willingness to support the same, and despite his confirmation of the renunciation of allegiance to any other person or country, the fact that petitioner made certain entries in his diary between December 1, 1938, and June 17, 1941 (R. 251-297), many indicating pride in the current activities of the German government and several critical of the Roosevelt administration, and the fact that petitioner between the late fall of 1936 and the early spring of 1941 in his conversations with others attempted to justify and explain certain German activities and expressed his ap-

proval thereof, was sufficient proof that petitioner made a false oath in 1932 that he was attached to the principles of and would support and defend the Constitution of the United States and bear true allegiance to the same.

IV.

Basic Questions Involved.

The fundamental questions here involved are:—

(1) Whether the government has established by competent evidence that petitioner fraudulently or illegally procured his citizenship.

(2) Whether to differentiate between the right of American-born citizens and the right of naturalized citizens to freely express personal views concerning national and international affairs does not violate the First and Fifth Amendments to the Constitution of the United States.

(3) Whether Congress can constitutionally attach to the exercise of the judicial power under Article Three of the Constitution authority, in the absence of extrinsic fraud or errors appearing on the face of the record, to reexamine a final judgment rendered by a court of competent jurisdiction granting a certificate of citizenship.

The following basic, though subsidiary, questions are also involved:—

(4) Whether one who believes that political philosophy and action of a nature obnoxious to and in conflict with generally accepted American standards are justifiable and proper in a foreign country because of the existing factual situation as he believed it to be, cannot at the same time be loyal and attached to the principles of the Constitution of the United States.

(5) Whether, in the light of intervening events, statements oral and written of a naturalized German citizen as to current events during the years 1937 and 1941 constitute unequivocal and convincing evidence of his state of mind during the years 1927 to 1932.

The questions here presented are of fundamental importance. The scope and implication of the questions involved far exceed the injustice to one individual. The decision of the District Court sustained by the Circuit Court of Appeals is a holding that as a matter of law the oath of allegiance in a naturalization proceeding is a fraudulent act which renders illegal the decree of naturalization if many years later the naturalized citizen entertains and expresses political beliefs at variance with those which some Federal court then believes to be correct for a loyal American citizen.

The soundness or wisdom of the political beliefs expressed by the petitioner is not here involved. But this Court is asked to determine whether freedom of political thought and belief, together with the right of articulate expression of such thought and belief, is the constitutional right of all citizens, native-born and naturalized alike, so long as it is not an advocacy of the use of force and violence to overthrow the government.

V.

The Facts.

Petitioner was born January 20, 1895, at Kiel, Germany (R. 145), and his wife was born at Gotha, Germany. His paternal ancestors, relatively well-to-do, for generations were flour millers and occupied a respectable place in the society of their community. Petitioner attended classical high school in Germany and graduated therefrom in 1914 when nineteen years of age (R. 146). He then enlisted in

the German Army in September, 1914 (R. 147), became a Corporal in 1915, and received a commission in 1917. In April of that year he was taken prisoner by the English and was transferred to England, where he remained a prisoner of war until November, 1919, when he was repatriated (R. 148-149). He then resumed his education at the University of Darmstadt and graduated therefrom in 1925 with a degree in Electrical Engineering. He was employed by a public utility at Freiburg until he came to the United States in February, 1927 (R. 150).

Petitioner was married in January, 1927, in Germany (R. 150), and his wife joined him here in September of that year (R. 147). They have three children, all born in the United States (R. 147). He was employed by the Kansas City Power & Light from 1927 to the time of his trial. Petitioner has never returned to Germany nor planned to return to Germany, and on several occasions so stated. Petitioner was born a Roman Catholic and remained so until he came to the United States, when he joined the Congregational Church and remained a member four or five years, but now is a member of St. Mark's Lutheran Church Protestant (R. 148). Petitioner came to America because from his reading it appealed to him, because he had friends here, and because he wanted to leave the economic ruin in Germany and look for another place where he could make a living (R. 152-153). He had no brothers or sisters and his parents are dead (R. 148, 182).

Petitioner belongs to the Steuben Society, the Turner Gymnastic Society of Kansas City, and to the American Institute of Electrical Engineers (R. 154), and for a time belonged, before and after coming to the United States, to the German Society of Electrical Engineers, which he discontinued in 1936 or 1937 because the dues were too high. There was no evidence which in any way connected the petitioner with any subversive activities. Petitioner had

no literature of any kind from Germany after he left there, except that he subscribed for the Berliner Illustrierte Zeitung in 1929 or 1930 for his wife (R. 158). He later received without solicitation booklets from the German Library of Information in New York and "Facts in Review" from the same source. This literature came to him from 1939 to 1940 when the German Consulate in New York was discontinued (R. 156-157). Petitioner also received a German language newspaper (formerly the Kansas City Presse) from Omaha, Nebraska. (R. 157).

Petitioner's wife and children are now in Germany, whither they went in May, 1939, with the intention of returning in six months or a year but were never able to do so (R. 157-160). Petitioner's wife cabled from Germany when war was declared that she wanted to come home (R. 165), and Petitioner attempted to borrow money so she and the children could return, but he was unable to do so (R. 159-160).

There is no evidence of anything objectionable done by petitioner at any time, nor any evidence of any statements after June, 1941, to which the government takes exception.

Petitioner has made clear explanations of all of his statements in his diary (R. 173-180, 188-189) and has either denied or explained all the "conclusions" of witnesses attributing statements to him (R. 151-172). J. W. Menzie, the F. B. I. agent, whose affidavit is attached to the complaint, admitted that petitioner made no effort to conceal anything and that everything he said in his statement (R. 239) was true with the exception of his statements that he was not anti-British and anti-Jewish (R. 106-107).

No subversive act of any kind is charged against petitioner, and he is not charged with counseling others to take action. The worst that can be said about petitioner is that he expressed, for the most part in 1938, 1939 and 1940, certain political views sympathetic to Germany and

Hitler and at variance with the political thinking of most American citizens.

He was in sympathy with the "America First Committee" and did not believe "it was good for this country to go to war" (R. 164). He believed as a citizen he had a right to express his views (R. 169). He is neither charged with nor proved to have had any official or unofficial connection with Germany or Hitler or any agents of either Germany or Hitler.

In essence, the petitioner is shown to be an intelligent, well educated man of good character, ability and reputation, interested abstractly in philosophy, religion, and politics, with a natural love for the country of his birth but loyal to the United States, his country by adoption. The loyalty of petitioner to the United States is more than lip-service or flag waving; it consists in living as an honest, law-abiding citizen, doing what he thought was in the public interest, and in the intelligent and honest expression of political and economic views, which is essential for the proper workings of a democratic government "of the people, by the people and for the people."

VI.

Applicable Statutory and Constitutional Provisions.

The applicable statutory law and provisions of the Constitution are set forth in Appendix A to this brief (*infra*, p. 41).

VII.

Analysis of Opinions of the Courts Below.

(a) District Court.

Findings of Fact.

The findings of fact made by the District Court are (R. 25-26):—

(1) Petitioner became a naturalized citizen of the United States September 26, 1932, on an application filed May 16, 1932.

(2) To obtain naturalization, he swore in open court that he renounced all fidelity to any foreign state and particularly to The German Reich and that he would bear true faith and allegiance to the Constitution and laws of the United States.

(3) "At the very time he took that oath he accepted as sound and believed to be righteous the principles of government then advocated and thereafter put in practice by Adolph Hitler, his real loyalty was to those principles."

(4) "Hitler's principles are diametrically opposed to those of the United States. Hitler believes in dictatorial rule, not in government 'of the people, by the people and for the people.' Hitler despises and has destroyed, where he could, representative government. Hitler asserts the Nazis are superior to other men, entitled to superior privileges, that America's doctrine that 'all men are created equal' is the raving of idiots. Hitler, by his tools, puts to the torch cathedrals, synagogues and churches; desecrates the lodges of Free Masons; burns libraries and books; imprisons priests, rabbis, clergymen; tortures the old, the weak, the young, if they are not of his so-called 'superior' race; robs helpless individuals of minorities of their property, sends them penniless into exile, murders hundreds of thousands of them in cold blood. Hitler enslaves millions, tramples under foot peoples who were free, who asked only they they might live in freedom; perverts and debases the minds and souls of young men and young women. *Baumgartner has approved in his own handwriting, either expressly or by inference, all these infamies.* He defends them. He says that Hitler's end justifies Hitler's means."

Conclusion of Law.

"There is only one possible conclusion to be reached. The order admitting Carl Wilhelm Baumgartner to citizenship and the certificate of citizenship granted him were obtained by fraud; they were illegally procured by means of an oath falsely made, that he had renounced all fidelity to the German Reich and that he would bear true faith and allegiance to the Constitution and laws of the United States." (R. 27).

It is clear that the District Court based its decision of illegality solely on its holding that the oath of allegiance was fradulently taken.

Petitioner in response to a question from the Court testified that he was loyal to the United States and that this loyalty was the same at the time of his trial as it was when he took the oath of allegiance (R. 183). Upon this, the Court held that petitioner's expressions of sympathy for Germany and her new government made in his diary in 1938 to 1941 must be read as though written in 1932 and required the cancellation of his citizenship.

(b) **Circuit Court of Appeals.**

The Circuit Court of Appeals in its opinion (Woodrough J. dissenting) (R. 338-351) considered both the charge of fraud and illegality without any attempt to analyze the significance and interdependence of those charges in the instant situation. It considered itself bound by the findings of the District Court.

> "The narrow question of fact in the present suit is whether appellant's allegiance to this country at the time of his naturalization was unqualified and unconditional, or, stated another way, it is whether his oath of allegiance was made without any mental reservation whatsoever in favor of the country of his origin, the German Reich. That the question is one of fact can

> not be doubted. * * * The finding of the trial judge upon the question of fact presented is conclusive on this court unless clearly erroneous * * *."
> (R. 347).

It held that the government need sustain its charges only by a clear preponderance of convincing evidence (R. 346); distinguishing the case of *Schneiderman* v. *United States*, 320 U. S. 118 (1943), because in that case "the charge was not fraud but that the judgment of naturalization had been illegally procured." (R. 346).

Judge Woodrough filed a strong dissenting opinion (R. 349-351).

VIII.

Specification of Errors to Be Urged.

1. The Court below erred in holding that there is sufficient evidence to sustain a finding that the petitioner fraudulently and illegally procured his citizenship.

2. The decree of the Court below is erroneous in that it denies to petitioner the freedom of speech guaranteed him by the First Amendment to the Constitution of the United States.

3. The Court below in applying a different standard of freedom of speech to a naturalized citizen from that applicable to a native-born citizen violated the Fifth Amendment to the Constitution of the United States.

4. Section 338 of the Nationality Act of 1940 as applied to this case by the Court below is unconstitutional in that it attempts to attach to the exercise of the judicial power under Article Three of the Constitution authority to annul, on grounds other than lack of jurisdiction or extrinsic fraud, the final judgment of the court which granted to petitioner a certificate of citizenship.

IX.

Summary of Argument.

I. The government has failed to establish that petitioner fraudulently or illegally procured his citizenship. The burden is on the government to prove by clear, unequivocal, and convincing evidence that petitioner during the five years preceding his naturalization was not loyal and attached to the principles of the Constitution of the United States. The statements made by petitioner many years after his naturalization do not clearly show disloyalty or lack of attachment to the Constitution at the time when made and cannot in any event be related back to the five year period prior to his naturalization to show his disloyalty during that period.

II. The decision of the court below denies to petitioner the freedom of thought and speech guaranteed by the First Amendment to the Constitution.

III. Section 338 of the Nationality Act of 1940 as interpreted by the courts below would be unconstitutional in that it would give to courts of the United States the power to vacate judgments of other courts on grounds other than lack of jurisdiction or extrinsic fraud.

X.

ARGUMENT.

Point No. 1.

The government has failed to establish that petitioner fraudulently or illegally procured his citizenship.

(a) **The burden of proof.**

The burden of proof is on the government, and it must prove its case by evidence which is clear, unequivocal and

convincing. *Schneiderman* v. *United States*, 320 U. S. 118 (1943). This is especially true where, as here, fraud is alleged. *Lalone* v. *United States*, 164 U. S. 255 (1896); *United States* v. *Bell Telephone Co.*, 167 U. S. 224 (1897).

(b) **The government's theory.**

On May 16, 1932, petitioner filed his petition for naturalization which set forth under oath, among other things, that:

> "I am attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. It is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to The German Reich, of whom (which) at this time I am a subject (or citizen), and it is my intention to reside permanently in the United States."

On September 26, 1932, petitioner took the following oath of allegiance in open court:

> "I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign price, potentate, state, or sovereignty and particularly to The German Reich of whom (which) I have heretofore been a subject (or citizen); that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion; So Help Me God. In acknowledgment whereof I have hereunto affixed my signature."

The government has charged that the above representations and oath of allegiance were false and fraudulent and that petitioner's certificate of naturalization was fraudu-

lently and illegally procured. It is not charged that the naturalization proceedings were defective in any other manner. (R. 3.)

The Nationality Act of 1940 authorizes the cancellation of certificates of citizenship procured (1) by "fraud" or (2) "illegally" (Sec. 338). The first ground, fraud, exists when a petitioner for naturalization (or one of his witnesses with his connivance) knowingly and falsely represents that he has fulfilled all the requirements of the statute. The second ground, illegality, exists when a necessary requirement for naturalization has not been fulfilled. This latter may occur by the action or mistake of a person other than the party petitioning for naturalization. This Court has held that the corresponding section (§15) of the Act of 1906 "makes nothing fraudulent or unlawful that was honest and lawful when it was done." *Johannessen* v. *United States*, 225 U. S. 227, 242 (1912).

In the present proceedings the illegality charged is the alleged insincerity of the oath of allegiance to the United States and of the attachment to its Constitution and laws. The fraud charged is that petitioner falsely and fraudulently took the oath of allegiance and that he falsely and fraudulently represented that he was attached to the Constitution and laws of the United States.

Thus it is clear that the theory of the government is that the naturalization certificate was illegally procured because petitioner falsely and fraudulently represented his attachment to the Constitution and laws of the United States and falsely and fraudulently took the oath of allegiance to the United States. To prove the illegality the fraud must be established, and once fraud is established the illegality follows. Petitioner is, in effect, charged with perjury.

The alleged fraud and illegality are fixed as of September 26, 1932, the date when petitioner took the oath of allegiance to the United States. The fraud itself turns

on what petitioner's thoughts and intentions *were* in 1932. But the inquiry concerning this fraud was not limited to what petitioner consciously thought, but was extended to thoughts that dwelt in his subconscious mind—which petitioner was not even aware of and had no means of ascertaining.

Thus the Circuit Court of Appeals states:

> "*What that allegiance is, only the alien can know, but he is bound to know.* The great importance of the proceeding to the United States and the fact that only the alien can know what his real allegiance to this country is compel the conclusion that, if the alien mistakenly swears to an allegiance which he does not possess or which perhaps, for reasons overlooked by or unknown to him at the time of his naturalization, he can never possess, he has failed to satisfy this requirement for his admission to citizenship. *It is the fact of the alien's allegiance to this country at the moment of naturalization and not his belief concerning it upon which the right to naturalization depends.*" (R. 346; italics added.)

The proceedings to denaturalize the petitioner are a by-product of the present world conflict. They are saturated with all of the suspicion, fear and other emotions incident to such a struggle. They bear little, if any, resemblance to the normal trial under American jurisprudence. They are more in the nature of an inquisition.

The petitioner testified that he was loyal to the United States when he took the oath of allegiance in 1932; he testified that he is still loyal to the United States; he testified that none of his thoughts or intentions were false and fraudulent at any time. There was no proof of the falsity of his assertions by evidence upon which a finding of fact would be based in a normal court proceeding. To prove the fraud the District Court was called upon to listen to a mass

of testimony as to what petitioner said years after his naturalization and to read a translation of a small portion of petitioner's diary kept from 1938 to 1941.

(c) The evidence.

The evidence introduced by the government may be divided into two parts: (1) oral testimony of witnesses and (2) petitioner's diary.

The oral testimony of witnesses fills 103 pages of the record. There is no evidence that petitioner was in any way disloyal or wanting in attachment to the Constitution of the United States during the vital five year period prior to September 26, 1932. Only one witness, John R. McKenzie, went back this far in testifying as to petitioner's statements. He testified that he talked to petitioner in his first week of employment with the Kansas City Power and Light Company, in August, 1927, which was prior to the five year period. His testimony, offered with a remarkable degree of certainty after a lapse of fifteen years, was to the effect that petitioner was not enthused over the German government but was enthused about "the present Hitler power over there", and German superiority in schools, drawings, sub-stations, etc. (R. 41-42). However unwise such comparisons may have been, they certainly showed no lack of attachment to the Constitution of the United States.

The entire remainder of the oral testimony embraced statements alleged to have been made by petitioner at least five years after his naturalization. For fifteen years the petitioner had lived in this country and obeyed its laws. He worked hard, paid his bills, and was active in the social, religious and political life of his city. He was never arrested for any violation of the law, and he has never done any act which has been criticized. Between 1937 and 1940 he openly stated that he did not believe this country should

go to war, that he believed the dismemberment of European nations after the last war wrong and that it justified the new unification.

This oral testimony as to statements alleged to have been made by petitioner from 1937 to 1941 may be roughly classified as follows:

(1) Praise of Germany and Hitler's work for Germany (R. 32, 37, 56, 58, 61, 72, 80, 83-85, 89-92, 93).

(2) Approval of Germany's course of action (R. 38, 70, 91, 95, 96).

(3) Comparison of conditions in German with those in the United States (R. 35, 44).

(4) Comparison of German and United States governments (R. 39-40, 52, 67).

(5) Criticism of the United States government (R. 84).

(6) Opposition to Jews (R. 38, 47, 67).

(See Record 191-209 for petitioner's explanation of many of these statements.)

The oral testimony of the government witnesses is essentially weak in several respects:

(1) The petitioner's alleged statements were made from one to five years before the testimony was given, and the witnesses naturally for the most part spoke either in vague generalities or offered their own conclusions as to what petitioner said.

(2) These witnesses in a time of war, with all its uncertainty, tensions and emotion, were applying hindsight,—were recollecting in the atmosphere of 1942 remarks made under very different circumstances. Under such circumtances even the most honest witness might perhaps unconsciously elaborate innocent remarks and statements and read into them meanings never intended by the speaker.

(3) Some of the government's witnesses were naturalized citizens of German birth who might themselves be denaturalized if their statements were considered unpatriotic. The cross-examination of Dr. Andreas Bard is typical of the sort of pressure to which a naturalized German who dares to appear for a defendant in a denaturalization proceeding may be subjected (R. 140-143).

The only other evidence produced by the government was petitioner's diary written in German from 1938 to 1941. Petitioner told the F.B.I. Agent, J. W. Menzie, at the time of his original investigation of petitioner's quarters, that two volumes on his desk were his diary (R. 102-104). No attempt was made to conceal or hide the diary; in fact petitioner voluntarily translated several passages. He did not at any time act like a guilty man. This diary was sent to Washington and translated in part by an employee of the F.B.I., one Gerald P. Hunt (R. 108). This partial translation is included in the record. The evidence clearly discloses that a translator frequently gets a meaning different from that of the author. It further discloses that Hunt's translation resolved doubts against petitioner; that is, if a passage could have a meaning in harmony with or opposed to majority American thought, Hunt selected the latter (R. 108-113). Hunt combed the diary; he selected all the passages which, *after he had interpreted them*, might be detrimental to the petitioner. These 192 passages taken from a two volume diary kept over a period of 939 days (December 1, 1938, to June 27, 1941) are printed in the record at pages 251 to 297, a total of 47 pages. These government-selected extracts of two volumes, torn from their context, devoid of any of the softening influences of normal daily events, and translated by an antagonist, constitute the government's documentary evidence in this case. An examination of the diary shows there were entries on 760 different days.

The entries made by petitioner in the translated portion of his diary may be roughly classified as follows:

1. Favorable criticism of German activities and Hitler (R. 256, 262, 293, 295, 296).

2. Listening to German short wave radio (R. 253, 258, 261, 263, 264, 267, 271, 273, 274, 280, 296).

3. Comments pertaining to his family and its visit to Germany (R. 256, 257, 262, 269, 272, 277, 279, 280, 282, 283, 291, 296).

4. Adverse criticism of England or English foreign policy (R. 253, 262, 264, 266, 271, 281).

5. Adverse criticism of America and American foreign policy (R. 254, 255, 262, 263, 265, 280, 292, 293, 295, 296, 297).

6. Unfavorable comments concerning Jewish activities (R. 252, 253, 254, 255, 256, 257, 262, 273, 287, 289, 290).

It is on the basis of these statements of political, social, and economic views, recorded in the most personal place without considered reflection, over a two and one-half year period—December 1, 1938 to June 27, 1941—that the government has sought to establish fraud on September 26, 1932.

The government did *not* introduce any evidence of:

(1) *any unlawful or disloyal act or deed* of petitioner, at any time;

(2) *any thought or statement* indicative of lack of attachment or allegiance to the United States in the five years preceding his naturalization;

(3) *any advocacy* by petitioner of the use of force or violence;

(4) *any membership* in an organization carrying on activities harmful to the interest of the United States;

(5) *any oral or written statement* by petitioner since June, 1941, bearing on his attachment or allegiance to the United States.

Petitioner denied many of the statements attributed to him. Others he explained. He explained the entries in his diary which he kept as a record of his day-by-day reaction to current events with the thought of its possible interest to him after ten or fifteen years (R. 158-209). He frankly admitted a natural love and affection for the country of his birth. This feeling is common to many naturalized citizens. At the time of naturalization new citizens are often advised by the court to retain interest in the land of their birth and affection for the things they have known before. They are not told to hate any race or people; rather they are told all men are created equal. They are told that citizenship is a privilege which carries with it the duty to vote and to participate actively in the conduct of their new government.

A loyal citizen of the United States attached to the principles of the Constitution may without inconsistency believe that a dictatorship is *in some respects* (as, for instance, efficiency) superior to a democracy. He may also believe that a dictatorship in a foreign country, in view of the history and local conditions of that country, is for the time being better than what preceded it.

The courts below did not try to analyze petitioner's views on racial superiority or his opposition to the political activity of the Jewish people. Petitioner testified that his objections to the Jewish people were not based on race hatred but on his belief that as a political group they wanted the United States to enter this war against Germany (R. 164). He was also against other political groups who advocated the same course. With respect to race superiority, petitioner testified that he believed that the German people as a race were superior in some aspects;

that likewise the American, English, French and other peoples were superior in other aspects. Racial superiority is applied by petitioner to specific talents of all races. It is not a broad generalization that one race is *for all purposes* superior to another race (R. 163-165).

In order to understand petitioner's statements from 1937 to 1941 reflecting his amazement at Germany's outward progress under Hitler, it is necessary to consider them against the background of political and economic events in Germany from November, 1919, when he was repatriated after World War I, until September, 1932, when he was naturalized. We assume that the Court will take judicial notice of these conditions, including the growing political chaos and the fabulous inflation which almost eliminated the middle class and made the outlook for the younger generation of Germans so dark that they were willing to turn to almost any leader who promised a way out. A very short sketch of some of these political and economic conditions during the period from 1919 to 1933 is added as Appendix B to this brief.

A number of witnesses, including the ministers of the two churches to which he belonged, testified that he was a man of good character and a good citizen (R. 138-145).

Petitioner is being deprived of the priceless privilege of citizenship because he exercised his right to think and speak. The trial judge violently condemned this man, but only after attributing to him, solely by inference, a belief in and an unqualified indorsement of infamous acts committed by Hitler and the present German government but not once mentioned in the evidence (R. 25-26). The findings of fact "are but the most general conclusions of ultimate fact." *Schneiderman* v. *United States, supra.*

Such was the evidence purporting to show that petitioner had a disloyal attitude of mind during the years 1937-1941.

To establish this disloyal attitude of mind for the years 1937-1941 it was necessary for the District Court to find as a fact that a person who listened to German broadcasts, read an occasional German publication, approved of certain specific actions taken by the German government and opposed the trend of this country toward war, could not be loyal to the government of the United States. In order to reach this result the District Court not only completely accepted the testimony of the government's witnesses but went a step further by concluding that anyone who could approve of certain actions taken by the Third German Reich must therefore be devoted to *all* the acts of that government and *all* of the philosophy of even the most rabid exponent of the course of action followed by that government.

We submit that the findings of the lower courts were not justified and that the government has failed to prove by clear, unequivocal, and convincing evidence that petitioner has at any time been disloyal or lacking in attachment to the Constitution of the United States.

(d) Evidence of petitioner's political views between 1937 and 1941 is not evidence of fraud or illegality in 1932.

But even if we assume for purposes of argument that findings of fact that petitioner was disloyal in 1937 or 1941 were supported by clear and convincing evidence, the Court was met by a still more serious problem. To find that this petitioner fraudulently and illegally obtained his naturalization certificate it was necessary to find that a disloyal attitude of mind during 1937-1941 *precluded* the possibility of a true oath of allegiance in 1932. The District Court did in fact so conclude. "There is only one possible conclusion to be reached" (R. 27).

Under the lower courts' theory good faith at the time the oath of allegiance was taken is immaterial. The im-

portant thing is the subconscious attitude of mind which is not capable of being measured by any known standard. Such a theory of fraud and illegality renders highly vulnerable the constitutional rights of all naturalized citizens. This Court has never approved the interpretation of fraud expressed by the courts below.

We take it that in spite of certain differences of opinion in the *Schneiderman Case, supra,* this Court was in agreement with the Chief Justice that a naturalized citizen's attachment to the principles of the Constitution when he applied for citizenship "must be inferred by the trier of facts from his conduct during the five year period" (p. 171) prior to such naturalization. The same must be true of his loyalty.

But the courts below determined these questions not from petitioner's "conduct during the five year period" prior to his naturalization but from what he said and wrote five to nine years thereafter. In order to do this it was necessary to "relate back" to 1932 what he said and wrote in 1937 to 1941.

The government has sought to impute fraud to petitioner in the year 1932 by "relating back" thoughts entertained and statements made by him during the years 1937-1941. Two fundamental vices of this principle of "relation back" are (1) that it is based on the fiction that we live in a static world and (2) that it falsely assumes that the meaning of words and phrases is immutable and unrelated to the circumstances under which they are spoken or written. It asserts that what one says and thinks in 1940 can be treated as though spoken or thought in the atmosphere and circumstances of 1930 or 1920 and show what one's attitudes in 1930 or 1920 were. The present case is typical of the grotesque results of such a fallacy.

Thus the courts below entirely overlooked important

economic and political facts prior to 1933 and a supervening force in the year 1933 which render untenable the fiction of relation back:

> "It cannot be too strongly reiterated that as late as a month before Hitler became Chancellor, his cause was still accounted hopelessly lost by responsible opinion. Even in December, 1932, when the writer discussed the political and economic situation with German businessmen, they always considered it useless nonsense to discuss what the economic policies of the National Socialist Party would be if it came to power. 'Historical curiosity' and 'the German Boulanger' were some of the terms applied to Hitler at this time. It was astonishing how two months later these same men were to insist publicly that he was a 'real statesman', as they shivered in anticipation of his next move on the economic front. But until he was securely in power they were all agreed that he had a biological aversion to the acceptance of responsibility, that his favorite role was that of the 'drummer' who roused the mob, that his terms for entering the cabinet were so severe because he hoped thus to put off the day when he must abandon his 'drumming' and make decisions." Calvin B. Hoover, *Germany Enters the Third Reich* (1934), p. 95.

Hitler's Third German Reich came into being in 1933. For several years it limited its activities to Germany. Many people all over the world were convinced, however wrongly, that it was a good thing. In the words of the District Court (R. 26):

> "The full measure of Hitler's depravity was not, in the beginning, known to the world."

It was not until years after 1932 that the world began to realize the true nature of the course of action the Third German Reich was going to follow. Leading statemen of the world misjudged its potential power, then were later

deceived as to its real purposes. It is not strange that petitioner, who wanted to see the nation of his birth again become a respected and strong nation, should also have been deceived. Petitioner had reason to hope and believe that Germany had a strong, good government; the normal sentimental interest he had in his native country not unnaturally blinded his reason and led him to believe that reports of atrocities were false. Viewed objectively his falsely aroused emotional reactions are far more understandable than the reactions of many prominent world leaders.

The fact that there was no Third German Reich, as we now know it, in 1932 emphasizes the impropriety of the application of the fiction of "relation back." Petitioner could not retain allegiance to a government which did not come into existence until after he had taken his oath of allegiance, nor could he be attached to such a non-existent government. It is an unusual compliment and at the same time a gross injustice to find as a fact that petitioner in 1932 foresaw the future that neither Germany nor the rest of the world believed possible.

It required a definite provision in Section 15 of the naturalization law to create a presumption "relating back" foreign residence within five years after the date of admission to citizenship [Act of June 29, 1906, c. 3592, § 15, 34 Stat. 601, as amended; 8 U. S. C. (1934 Ed.) § 405]. In upholding the presumption thus created this Court has pointed out that it becomes weaker and weaker during the five year period. *Luria* v. *United States*, 231 U. S. 9 (1913).

The principle of "relation back" of expressions of disloyalty was first invoked in 1918 in *United States* v. *Wursterbarth*, 249 Fed. 908, by the United States District Court for New Jersey. In this case a native of Germany naturalized in 1882 made disloyal statements during World War I. Judge Haight said:

"As the years succeeding his naturalization passed, coupled with the fact that he continued to dwell within our midst, associate with our citizens, receive the benefits which this nation and its institutions have conferred upon him, acquire property here, and hold public office * * *, it is natural to presume that his affection and feeling of loyalty and allegiance to this country would increase, and that any ties which bound him to the country from which he came would correspondingly decrease.

"If, therefore, under such circumstances, after 35 years, he now recognizes an allegiance to the sovereignty of his origin, superior to his allegiance to this country, it seems to me that it is not only permissible to infer from that fact, but that the conclusion is irresistible, that at the time he took the oath of renunciation, he did so with a mental reservation as to the country of his birth, and retained toward that country an allegiance which the laws of this country required him to renounce before he could become one of its citizens. Indeed, for the reasons just stated, his allegiance to the former must at that time have been stronger than it is at present" (p. 910).

While this principle has been followed in some cases, mostly under the stress of war, it has been rejected in others, of which the following are typical:

United States v. *Woerndle*, 288 Fed. 47 (C. C. A. 9th 1923);

Rowan v. *United States*, 18 F. (2d) 246 (C. C. A. 9th, 1927);

United States v. *Jentzsch*, 48 F. Supp. 482 (D. C. M.D. 1942);

United States v. *Polzin*, 48 F. Supp. 476 (D. C. M.D. 1942);

United States v. *Hartmann*, 51 F. Supp. 394 (D. C. E.D. Pa. 1943);

United States v. *Hugg*, 51 F. Supp. 397 (D. C. E.D. Pa. 1943);

United States v. *Kuhn*, 51 F. Supp. 400 (D. C. E.D. Pa. 1943).

Apparently realizing the weakness of the principle and the fact that some courts would not follow it, the Attorney General presented to the 77th Congress a bill, H. R. 6250, Sec. 8 of which provided an additional ground for denaturalization, viz., "on the ground that his utterances, writings, actions, of course of conduct establishes that his political allegiance is to a foreign state or sovereignty." This bill passed the House but not the Senate: 88 Cong. Rec. pp. 292/5, 296/308, 319, 8673, 9570.

The doctrine becomes even more grotesque when we consider that the so-called "fraud" may be entirely unconscious. The naturalized citizen may admittedly have taken the oath of allegiance in the utmost good faith and still have his citizenship revoked on the ground that the oath was "fraudulent" because some court years later finds that in his subconscious mind he was not in fact attached to the Constitution and loyal to the United States though he fully believed that he was.

Thus in the present case the Circuit Court of Appeals states:

> "If the alien mistakenly swears to an allegiance which he does not possess or which perhaps, for reasons overlooked by or unknown to him at the time of his naturalization, he can never possess, he has failed to satisfy this requirement for his admission to citizenship. It is the fact of the alien's allegiance to this country at the moment of naturalization and not his belief concerning it upon which the right to naturalization depends" (R. 346).

We are at a loss to understand this metaphysical idea of loyalty and allegiance. We had supposed that they are matters of the mind and will and that if one consciously and in good faith devotes himself to a country or an individual he is at that time loyal to the object of his devotion, no matter how much he may swerve from that loyalty in later years.

Furthermore, there is no reason why, if the principle of "relation back" is sound, it should not also apply to requirements other than loyalty—as, for instance, to good moral character. But no court, we believe, has had the temerity to hold that because a naturalized citizen five or ten years after his naturalization commits a crime involving moral turpitude he may be denaturalized on the ground that this shows he was not of good moral character in the five years preceding his naturalization. See *United States* v. *Tedesco*, 31 F. Supp. 322 (D. C. S. D. N. Y. 1940).

Nor can the findings be justified on the basis of the query put to the petitioner by the District Court as to whether his loyalty was the same when he testified in 1942 as it was when he took the oath of allegiance. There is no question but what he considered himself loyal at both times and consequently his answer to the question was in the affirmative. If his answer had been in the negative, it would not only have been false but would have convicted him of disloyalty. Furthermore, if as the Circuit Court indicates, his loyalty or disloyalty was a subconscious attitude "unknown to him at the time of his naturalization," how could he know of it in 1942?

The government has not established by clear, unequivocal, and convincing evidence that the petitioner fraudulently and illegally procured his citizenship, and for this reason the judgment of the court below is erroneous.

Point II.

The decision of the court below is a denial of the freedom of thought and freedom of speech guaranteed petitioner.

The First Amendment to the Constitution of the United States provides in part:

> "Congress shall make no law * * * abridging the freedom of speech, or of the press * * *."

The time when the First Amendment was adopted is indicative of its importance. With the battle for freedom fresh in the minds of the American people, they sought to make it possible for the future generations to think and to speak, openly and without fear, the opinions they held pertaining to the government. The wisdom of these early Americans in so providing is unquestionable. Freedom of thought and speech with respect to controversial political activity is a minimum requirement for democratic government. To further insure freedom of thought and speech the authors of the Constitution defined treason:

> "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court." (Art. III § 3.)

The effect of the decision below is to abridge the freedom of thought and speech of petitioner. Petitioner was deprived of his citizenship because in the opinion of the court below his political beliefs indicated a lack of attachment to the Constitution and laws of the United States.

In the case of *West Virginia Board of Education* v. *Barnette*, 319 U. S. 624, (1943), Mr. Justice Jackson, speaking for this Court, said:

"It is now a commonplace that censorship or suppression of expressions of opinion is tolerated by our Constitution only when the expression presents a clear and present danger of action of a kind the state is empowered to prevent and punish." (p. 633.)

"But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. *The test of its substance is the right to differ as to things that touch the heart of the existing order.* (Italics added)

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." (p. 642)

This Court has held, in the case of *Bridges* v. *California*, 314 U. S. 252 (1941), that freedom of speech and opinion exists at all times for all citizens (Mr. Justice Black):

"Ratified as it was while the memory of many oppressive English restrictions on the enumerated liberties was still fresh, the First Amendment cannot reasonably be taken as approving prevalent English practices. On the contrary, the only conclusion supported by history is that the unqualified prohibitions laid down by the framers were intended to give to liberty of the press, as to the other liberties, the broadest scope that could be countenanced in an orderly society." (p. 265)

"No suggestion can be found in the Constitution that the freedom there guaranteed for speech and the press bears an inverse ratio to the timeliness and importance of the ideas seeking expression." (p. 269)

In his dissenting opinion in *United States* v. *Schwimmer*, 279 U. S. 644, (1929), Mr. Justice Holmes said:

"* * * But if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not

> free thought for those who agree with us but freedom for the thought we hate." (pp. 654, 655)

There is no doubt that the authors of the Constitution and the First Amendment intended them to apply with equal force to all citizens, native-born and naturalized. They realized the United States would grow and that this growth would be the result of immigration from other countries.

As early as *Osborn et al* v. *The Bank of the United States*, 9 Wheat, (U. S.) 738, (1824), this Court recognized that naturalized citizens had the same rights, powers, privileges and duties as native-born citizens and that Congress, even though authorized to establish naturalization requirements, was without power to classify citizens on such a basis. In the case of *Luria* v. *United States*, 231 U. S. 9, (1913), this Court held:

> "Under our Constitution, a naturalized citizen stands on an equal footing with the native citizen in all respects, save that of eligibility to the Presidency." (p. 22)

The danger of setting up two classes of citizenship is apparent. The naturalized citizen would never be free to think and speak. He would have to examine with suspicion each organization he cared to join. He would have to weigh with precision each word he uttered. The words of Mr. Justice Rutledge in his concurring opinion in the *Schneiderman Case*, *supra*, p. 167, are applicable here:

> "His best course would be silence or hypocrisy. This is not citizenship."

To set up a double standard of freedom of speech, one for the native-born and one for the naturalized citizen, would deny the equal protection of the law impliedly granted by the Fifth Amendment insofar as fundamental civil rights are concerned: *Hirabayashi* v. *United States*, 320 U. S. 81, (1943).

POINT III.

Section 338 of the Nationality Act of 1940 as here applied would be unconstitutional.

Article III, Section 1, of the Constitution of the United States provides:

> "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Naturalization is a judicial proceeding.
Tutun v. *United States*, 270 U. S. 568 (1926);
Schneiderman v. *United States*, *supra*.

Article I, Section 8, Clause 4, of the Constitution provides that Congress shall have power:

> "To establish a uniform Rule of Naturalization * * *"

While the power of naturalization is exclusively in Congress, it has conferred the function of admitting to citizenship exclusively upon courts since the foundation of our government (see Act of March 26, 1790, Chap. 3; 1 Stat. 103).

It was early held that a naturalization decree was a judgment not subject to collateral attack. *Spratt* v. *Spratt*, 4 Peters 393 (1830). In this case, which involved a question of title to land, Mr. Chief Justice Marshall in speaking of naturalization stated:

> "The various acts upon the subject submit the decision on the right of aliens to admission as citizens to courts of record. They are to receive testimony, to compare it with the law, and to judge on both law and fact. This judgment is entered on record as the judg-

ment of the court. It seems to us, if it be in legal form, to close all inquiry; and, like every other judgment, to be complete evidence of its own validity.

"The inconvenience which might arise from this principle, has been pressed upon the court. But the inconvenience might be still greater if the opposite opinion be established. It might be productive of great mischief, if, after the acquisition of property on the faith of his certificate, an individual might be exposed to the disabilities of an alien, on account of an error in the court not apparent on the record of his admission." (pp. 407-408).

In passing upon an application for citizenship the court exercises judicial judgment subject to appeal.

Tutun v. *United States*, 270 U. S. 568 (1926).

It is submitted that Congress does not have the power to enact legislation the effect of which is to authorize a court to set aside or annul a judgment or decree of a coordinate court of competent jurisdiction except in cases of extrinsic fraud or for errors apparent on the record.

In the case of *United States* v. *Throckmorton*, 98 U. S. 61 (1878), this Court held:

"The acts for which a court of equity will on account of fraud set aside or annul a judgment or decree, between the same parties, rendered by a court of competent jurisdiction, have relation to frauds, extrinsic or collateral, to the matter tried by the first court, and not to a fraud in the matter on which the decree was rendered." (p. 68).

The integrity of a final judgment rendered by a court of competent jurisdiction is an essential requirement for the proper functioning of any judicial system. The power to enter a final judgment is an inherent judicial power which is not subject to interference by legislative action.

Before discussing the decisions of this Court under Section 15 of the Naturalization Act of 1906, substantially re-

enacted in Section 338 of the Nationality Act of 1940 (34 Stat. 1158; 8 U. S. C. Sec. 738), it may be worth while to recall that this section was enacted principally because of the illegal practices of officials in St. Louis in issuing spurious certificates. It was at first held by some of the district courts that this section should be restricted to cases involving conditions similar to those which brought about the enactment of this section. See *United States* v. *Lenore*, 207 Fed. 865 at 867-868 (1913), in which Judge Amidon in refusing to cancel a certificate of naturalization because of the fact that the petition had been signed by mark, the United States having been represented at the naturalization hearing by counsel, gives a history of the abuses which led up to the enactment of Section 15.

All but one of the cases in which this Court has approved the cancellation of citizenship certificates under Section 15 arose prior to 1926 and were decided on the basis either that the naturalization proceeding was ex parte or that error appeared in the record.

It seems doubtful whether naturalization proceedings at any time after 1906 could properly be considered as ex parte in view of the fact that (1) the United States was given the right to appear and actively participate therein [Act of June 29, 1906, Sec. 11; 8 U. S. C. (1925 Ed.) Sec. 399], (2) complete notice of the final hearing was required to be posted by the Clerk of the Court [Sec. 5; 8 U. S. C. (1925 Ed.) Sec. 397] and (3) ninety days was required to elapse after the filing of the petition and posting notice before the final hearing could be held [Sec. 6; 8 U. S. C. (1925 Ed.) Sec. 396].

Black in defining *ex parte* states: "A judicial proceeding, order, injunction etc., is said to be *ex parte* when it is taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested." [Black's Law Dictionary (3rd Ed., 1933)].

However this may be, a naturalization proceeding since 1926 can certainly not be considered *ex parte*. In that year the Immigration and Naturalization Service, following the passage of the Act of June 8, 1926 [c. 502, 44 Stat. 709; 8 U. S. C. (1925 Ed.) Sec. 399 (a), page 1898], authorizing the judges of the district court to designate examiners of the Bureau of Naturalization to conduct preliminary hearings and make findings and recommendations thereon, adopted a new system for the examination of applicants for naturalization. Under this procedure an applicant, before he files his petition for naturalization, is examined by an examiner of the naturalization service to ascertain that the witnesses are competent and that the alien is able to file a valid petition. After the petition is filed there is a preliminary hearing in the Bureau, open to the public and presided over by a second examiner, named by the court under the Act of 1926, called the "designated examiner." All evidence, favorable and unfavorable, is received and all pertinent information is sought to be obtained to the end that the designated examiner may make correct findings. On completion of the preliminary hearing the designated examiner prepares a record thereof, and this record is kept available for the naturalization court.

The designated examiner then recommends to the court that the petition be granted, denied or continued. Notice of the final hearing is posted by the Clerk of the Court, and ninety days must elapse before the final hearing. At the final hearing in open court before a judge of the district court a naturalization examiner appears in behalf of the United States. This examiner is not necessarily the same examiner who acted as the preliminary examiner, nor is he necessarily the designated examiner. Wherever it is possible an examiner other than either of these is assigned to attend the final hearing in open court. The United States

Attorney may of course also attend and oppose the application.

We understand this procedure was followed in the naturalization of this petitioner in 1932. We submit that a judgment entered after such a detailed procedure, designed to safeguard the rights of the United States and those of the applicant for citizenship, cannot be said to be the result of an *ex parte* proceeding.

In cases in which this Court has upheld denaturalization proceedings under Section 15 of the Act of 1906, it has proceeded on the assumption that the naturalization proceedings there involved were *ex parte*. There can, we submit, no longer be any sound basis for such an assumption in naturalization cases arising since 1926.

In the first of these cases, *Johannessen* v. *United States*, 225 U. S. 227 (1912), the appellant had been naturalized in 1892 in a state court in Washington less than four years after his arrival in the United States. Mr. Justice Pitney in delivering the opinion of the Court pointed out that prior to the passage of the Naturalization Act of 1906 there was no provision in the law requiring notice to the government or authorizing the United States to appear in the naturalization proceedings. While he assumed that a right to appear existed without express enactment, he stated:

> "What may be the effect of a judgment allowing naturalization in a case where the government has appeared and litigated the matter does not now concern us. See 2 Black, Judgm. § 534a. What we have to say relates to such a case as is presented by the present record, which is the ordinary case of an alien appearing before one of the courts designated by law for the purpose, and, without notice to the government, and without opportunity, to say nothing of duty, on the part of the government to appear, submitting his application for naturalization with *ex parte* proofs in support thereof, and thus procuring a certificate of citizenship. In view of the great number of aliens thus applying at

irregular times in the various courts of record of the several states and in the Federal circuit and district courts throughout the Union, and bringing their applications on to summary hearing without previous notice to the government of the United States or to the public, it is, of course, impossible that the public interests should be adequately represented, and in our opinion the sections quoted from the Revised Statutes are not open to any construction that would give a conclusive effect to such an investigation when conducted at the instance of and controlled by the interested individual alone. (pp. 237-238).

* * * * * * *

"Sound reason, as we think, constrains us to deny to a certificate of naturalization, procured *ex parte* in the ordinary way, any conclusive effect as against the public." (p. 238).

The Bureau of Naturalization was not created until 1906 (Act of June 29, 1906, Section 1), at which time the Bureau of Immigration was redesignated "Bureau of Immigration and Naturalization." At the time Johannessen was naturalized there was no government administrative agency charged with the administration of the naturalization laws. Prior to 1906, therefore, naturalization proceedings might properly be considered as having been *ex parte*.

In all but two of the succeeding cases in which this Court has approved of the cancellation of certificates of citizenship the errors of the naturalization court appeared upon the face of the record. *United States* v. *Ginsberg*, 243 U. S. 472 (1917) (final hearing in judge's chambers instead of in open court as required); *United States* v. *Ness*, 245 U. S. 319 (1917) (certificate of arrival not filed as required)*;

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* Note: This case arose in the 8th Circuit, which held that the Circuit Court of Appeals had no jurisdiction of an appeal from a naturalization decree [*Marx* v. *United States*, 276 Fed. 295 (1921)]. The bill to cancel the decree was filed within six months after it was granted.

Toyota v. *United States*, 268 U. S. 402 (1925) (a Japanese born in Japan is not eligible to citizenship in the United States though serving in the armed forces of the United States during World War I); *Maney* v. *United States*, 278 U. S. 21 (1928) (final hearing within ninety days after filing of certificate of arrival). In each of these cases the decree of naturalization was void on its face and could not be *res judicata*. The only other two cases in which this Court has upheld cancellations of citizenship under Section 15 are *Luria* v. *United States*, 231 U. S. 9 (1913) and *Schwinn* v. *United States*, 311 U. S. 616 (1940).

In *Luria* v. *United States, supra*, the appellant was naturalized in 1894 and within a few months thereafter left for South Africa, where he practiced his profession as a physician until the date of the hearing in the cancellation proceedings in 1910 with the exception of four or five months in 1907 during which he was taking a post-graduate course in a medical school in New York. The principal point decided was the validity of the provision of Section 15 to the effect that taking up a permanent residence in a foreign country within five years after naturalization shall be considered prima facie evidence of a lack of intention to become a permanent citizen of the United States, because there is a rational connection between the fact proved and the ultimate fact presumed. It is to be noted, however, that as the appellant was naturalized long prior to the passage of the Act of 1906, there was therefore ground for holding that the naturalization proceedings were *ex parte*.

In *Schwinn* v. *United States, supra*, the district court cancelled a decree of citizenship on the ground of fraud and illegality in that the two witnesses who subscribed the naturalization petition had not in fact known Schwinn for five years. The Circuit Court of Appeals affirmed upon

the ground of fraud only [112 F. (2d) 74 (C. C. A. 9th, 1940)]. A petition for certiorari was filed in this Court, which entered the following order per curiam: "The petition for writ of certiorari is granted. The judgment is affirmed on the sole ground that the certificate of citizenship was illegally procured." There was, of course, no oral argument and there is no indication that the question here persented was considered.

We therefore submit that since the passage of the Naturalization Act of 1906, and particularly since 1926 when the revised practice of the Bureau of Naturalization was put into effect, it cannot be said that a naturalization proceeding is *ex parte*. If this is so, it would seem that a decree of naturalization should be considered as a binding judgment which like other judgments is open to attack only on the ground of extrinsic fraud or for errors on the face of the record showing its invalidity.

Section 338 of the Nationality Act of 1940 should be limited accordingly, at least insofar as certificates of citizenship granted since 1926 are concerned. To extend it further would raise grave doubts of its constitutionality as an attempt by Congress to authorize a collateral attack on valid final judgments rendered by courts of competent jurisdiction.

XI.

CONCLUSION

We submit that the judgment of the court below denaturalizing petitioner should be reversed because:—

(1) The government has failed to prove by clear, unequivocal and convincing evidence that petitioner took a false oath of allegiance or that during the five years preceding his naturalization he was not attached to the principles of the Constitution of the United States, and has

therefore failed to establish that he procured his citizenship by fraud or illegally;

(2) The decision of the court below denies to petitioner the freedom of thought and speech guaranteed by the First Amendment to the Constitution;

(3) Petitioner's citizenship was not obtained in an *ex parte* proceeding and the decree granting it was a valid final judgment of a court of competent jurisdiction which cannot be revoked or annulled in a proceeding under Section 338 of the Nationality Act of 1940 except for extrinsic fraud or error appearing of record.

Respectfully submitted,

DAVID A. KERR,
HAROLD EVANS
Counsel for Petitioner.

APPENDIX A.

Applicable Statutory Law.

The applicable statutory law in the instant situation is the law pertaining to naturalization of aliens as it was on September 26, 1932, the date petitioner was admitted. The Act of June 29, 1906, Chap. 3592, § 4, 34 Stat. 596, as amended by the Act of March 2, 1929, Chap. 536, § 6, 45 Stat. 1513, provided in part:

> "Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition: *Provided*, That if he has filed his declaration before June 29, 1906, he shall not be required to sign the petition in his own handwriting.
>
> "The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and

particularly by name to the prince, potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application." [8 U. S. C. (1925 Ed.) § 379.]

"As to each period of residence at any place in the county where the petitioner resides at the time of filing his petition, there shall be included in the petition the affidavits of at least two credible witnesses, citizens of the United States, stating that each has personally known the petitioner to have been a resident at such place for such period, and that the petitioner is and during all such period has been a person of good moral character." [8 U. S. C. (Supp. V, 1931) § 379.]

"At the time of filing his petition there shall be filed with the clerk of the court a certificate from the Department of Labor, if the petitioner arrived in the United States after June 29, 1906, stating the date, place, and manner of his arrival in the United States and the declaration of intention of such petitioner which certificate and declaration shall be attached to and made a part of such petition." [8 U. S. C. (1925 Ed.) § 380.]

"He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same." [Id., § 381.]

"No alien shall be admitted to citizenship unless (1) immediately preceding the date of his petition the alien has resided continuously within the United States for at least five years and within the county where the petitioner resided at the time of filing his petition for at least six months, (2) he has resided continuously within the United States from the date of his petition up to the time of his admission to citizenship, and (3) during all the periods referred to in this section he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. At the hearing of the petition, residence in the county where the petitioner resides at the time of filing his petition, and the other qualifications required by this section during such residence, shall be proved by the oral testimony of at least two credible witnesses, citizens of the United States, in addition to the affidavits required by section 379 of this title to be included in the petition." [8 U. S. C. (Supp. V, 1931) § 382.]

The Act of June 29, 1906, Chap. 3592, § 9, 34 Stat. 599 [8 U. S. C. (1925 Ed.) § 398], provides in part:

"Every final hearing upon a petition for naturalization shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon a record kept for that purpose, and upon such final hearing of such petition the applicant and witnesses shall be examined under oath before the court and in the presence of the court."

The Nationality Act of 1940, Section 338, 54 Stat. 1158 [8 U. S. C. (1940 Ed.) § 738], which is essentially a re-enactment of Section 15 of the Act of 1906 [8 U. S. C. (1925 Ed.) § 405], provides in part:

"(a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings

in any court specified in subsection (a) of section 701 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and cancelling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

Section 11 of the Act of June 29, 1906, c. 3592, 34 Stat. 599 [8 U. S. C. (1925 Ed.) Section 399], which was substantially re-enacted by section 334 (d) of the Nationality Act of 1940, 54 Stat. 1158 [8 U. S. C. (1940 Ed.) Section 734 (d)], provides:

"The United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings."

The Act of June 8, 1926, c. 502, 44 Stat. 709 [8 U. S. C. (Supp. V, 1931) Section 399a] (substantially re-enacted by Section 333 of the Nationality Act of 1940) added the following to Section 4 of the Act of June 29, 1906:

"(a) The judge of any United States district court, or the senior judge of such court if there are more judges than one, is hereby authorized, in his discretion, to designate one or more examiners or officers of the Bureau of Naturalization (including the Naturalization Service) serving as such examiner or officer within the territorial jurisdiction of such court, to conduct preliminary hearings upon petitions for naturalization to such court, and to make findings and recommendations thereon. For such purposes any such designated examiner or officer is hereby authorized to take testimony concerning any matter touching or in any way affecting

the admissibility of any petitioner for naturalization, to subpoena witnesses, and to administer oaths, including the oath of the petitioner to his petition and the oath of his witnesses.

"(b) The findings of any such designated examiner or officer upon any such preliminary hearing shall be submitted to the court at the final hearing upon the petition required by section 398 of this title, with a recommendation that the petition be granted or denied or continued, with the reasons therefor. Such findings and recommendations shall be accompanied by duplicate lists containing the names of the petitioners, classified according to the character of the recommendations, and signed by the designated examiner or officer. The judge to whom such findings and recommendations are submitted shall by written order approve such recommendations with such exceptions as he may deem proper, by subscribing his name to each such list when corrected to conform to his conclusions upon such recommendations. One of such lists shall thereafter be filed permanently of record in such court and the duplicate list shall be sent by the clerk of such court to the Commissioner of Naturalization.

"(c) The provisions of section 398 of this title requiring the examination of the petitioner and witnesses under oath before the court and in the presence of the court shall not apply in any case where a designated examiner or officer has conducted the preliminary hearing authorized by this subdivision; except that the court may, in its discretion, and shall, upon demand of the petitioner, require the examination of the petitioner and the witnesses under oath before the court and in the presence of the court."

Applicable Constitutional Provisions.

Article I, Section 8, Clause 4, of the Constitution provides that Congress shall have power:

"To establish a uniform Rule of Naturalization * * *"

Article III, Section 1, of the Constitution provides:

> "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish * * *".

The First Amendment to the Constitution provides in part:

> "Congress shall make no law * * * abridging the freedom of speech, or of the press * * *"

APPENDIX B.

Shortly after the Social Democrats assumed power in Germany at the close of World War I and no immediate steps were taken toward a socialist commonwealth, the radical wing of the party revolted. The Sparticist rebellion was short-lived after Noske called in the old officer caste to defend the government. The Sparticist rebellion was followed by other later Communist uprisings, which were violently suppressed. This successful method of crushing uprising against the government was responsible for the establishment and growth of Reichswehr. The nucleus of the Reichswehr leadership was collected from leaders of armed bands—officers and soldiers of the old army—who roamed the land fighting Poles in Silesia or local Communist governments. Sometimes these operations were directed by the Social Democrats, sometimes by another party, but most frequently they were the result of the initiative of the armed band itself. An armed band led by Kapp attempted a *putsch* against the Republic in 1920. Hitler attempted a *putsch* in 1923. When such a *putsch* by the military against the government failed, as both of the last mentioned did, there was no thought of serious punishment.[1]

Germany was in a state of economic as well as political turmoil.

During the peace negotiations the value of the German exchange began to decline. It continued to fall rapidly

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Note 1. Calvin B. Hoover, *Germany Enters the Third Reich* (1933) p. 35-37.

until about February, 1920, when it was checked at about 1/24 of its pre-war value. It recovered somewhat in May of that year. In June, 1922, the mark sold for about ⅓ of a cent. From that point on the exchange value dropped until the final collapse in November, 1923, at which time an American cent was worth forty-two billion marks.

During the middle twenties students in Germany were confronted with the fact that it would be virtually impossible to find employment of any nature whatsoever after graduation. Young engineers who were anxious to get practical experience with a large concern such as the German General Electric Company had to pay for the privilege of working. Conditions such as this prevailed in all professions until 1933. These are the circumstances which led petitioner in 1927 to come to the United States to start life anew in a land where he would have an opportunity to earn his living.[2]

After his unsuccessful *putsch* in 1923 Hitler had lost his taste for this method of achieving power. He continued, however, to work diligently to develop the National Socialist Party. Hitler's party established their own armed guard, the *Sturm Abteilung* (S.A.) and the elite *Schutzstaffel* (S.S.), to combat the power of the Social Democrats' *Reichwehr* which had been able to exercise a veto power over the political destiny of Germany as early as 1923. The National Socialist Party was like a festering thorn in Germany's side spreading infection through the body politic until 1933, when the Nazis finally came to power. To the rest of the world the National Socialists were merely another political party struggling for authority in a Germany which was politically, socially and economically bankrupt.

Applying hindsight, the twilight period of the German Republic was about June, 1932, when the last Republican cabinet ended with Chancellor Bruening. When von Papen succeeded Bruening he set up the first "presidential" cabinet, which was indeed a curious affair. The decision to support von Papen's cabinet was a clear rejection by industrialists, bankers, and businessmen of National Social-

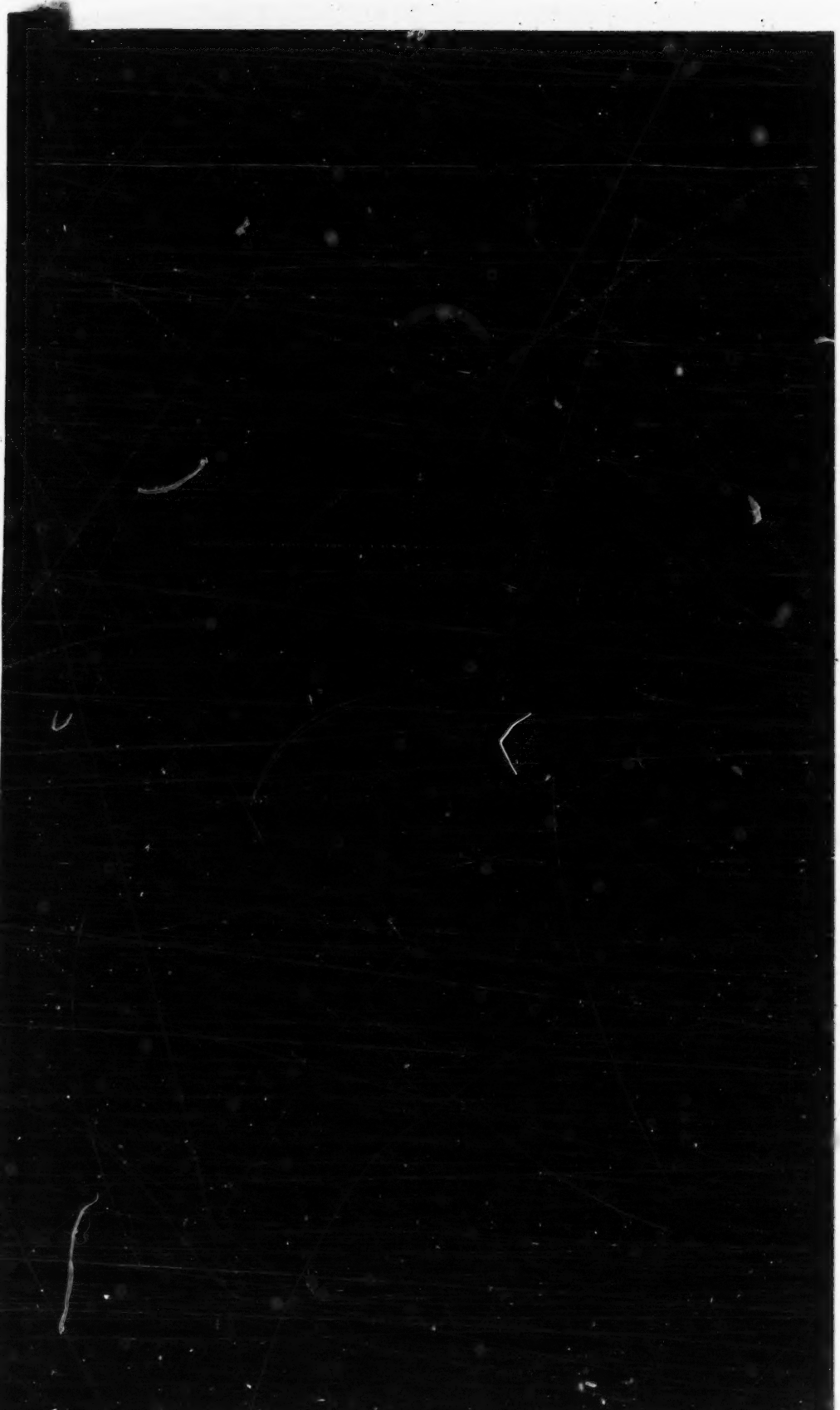
[2] Id. p. 25.

ism as a substitute for capitalism. It was the first need for any such rejection because prior to the collapse of Bruening's cabinet there had been no objection to National Socialism. There had been no objection to National Socialism for the simple reason that the industrial leaders, bankers, and businessmen—together with the rest of the world—had observed the entire movement with tolerant indulgence believing it to be nothing more than an expression of nationalism.

The von Papen cabinet was not the strong government that many had believed it to be. There was a long drawn out cabinet crisis from the middle of November until early in December, 1932. The crisis culminated in the removal of an embittered von Papen and in the installation of Chancellor von Schleicher. With the advent of Chancellor von Schleicher—the "strong man"—all Germany breathed more easily, believing that Germany was in good hands and the National Socialist movement under Hitler could be forgotten.

Late in January, 1933, Hitler was appointed Chancellor by von Hindenburg to head a coalition government.[3]

[3] Id. p. 50-95.



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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 493

CARL WILHELM BAUMGARTNER, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the Circuit Court of Appeals (R. 338–351) are reported at 138 F. (2d) 29. The opinion of the District Court (R. 25–27) is reported at 47 F. Supp. 622.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on September 11, 1943 (R. 352). The petition for a writ of certiorari was filed November 18, 1943, and was granted January 17, 1944 (R. 352). The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

This case presents for decision a question explicitly reserved in *Schneiderman* v. *United States*, 320 U. S. 118, 159, namely, whether a district court, acting pursuant to the authority vested in it by Congress, can properly cancel a certificate of naturalization upon proof that the alien procured citizenship by falsely and fraudulently declaring on oath that he absolutely and entirely renounces all allegiance and fidelity to the country of his origin, and that he will bear true faith and allegiance to the United States.

As presented by the case at bar, the question has two aspects:

1. Whether the concurrent finding of the two courts below that the petitioner's certificate of naturalization was illegally and fraudulently procured is supported by clear, unequivocal, and convincing evidence.

2. Whether cancellation of the petitioner's citizenship was proper under the statute and the Constitution.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra*, pp. 60–64.

STATEMENT

Proceeding under Section 338 of the Nationality Act of 1940 (8 U. S. C. 738), the United States on August 21, 1942, brought suit in the United States District Court for the Western District of Mis-

souri to cancel the certificate of naturalization issued by that court to the petitioner, a native of Germany, on September 26, 1932. The complaint charged that the certificate was fraudulently and illegally procured in that the petitioner falsely swore in his petition for naturalization and in open court that he absolutely and entirely renounced and abjured all allegiance and fidelity to the German Reich; that he would support and defend the Constitution and laws of the United States against all enemies, foreign and domestic; and that he would bear true faith and allegiance to the same (R. 1–4). Attached to the complaint was an affidavit of cause by a special agent of the Federal Bureau of Investigation (R. 4–22). In his answer, the petitioner denied these charges, and affirmatively asserted that he was and had always been attached to the principles of the Constitution, that he had renounced all allegiance to the Reich, and that he had continuously since his naturalization borne true faith and allegiance to the United States without mental reservation or purpose of evasion (R. 22–24).

The evidence, which is set forth more extensively in the Argument, may be briefly summarized here as follows:

The petitioner was born in Kiel, Germany, on January 20, 1895 (R. 145), and came to the United States on February 9, 1927, when he was 32 years old (R. 147). On June 14, 1927, he filed a declaration of intention to become a citizen

(R. 243–244), and on May 16, 1932, he filed a petition for naturalization in the United States District Court for the Western District of Missouri (R. 244–247). The court issued him a certificate of citizenship on September 26, 1932 (R. 251).

In 1914, when he was 19 years old, the petitioner enlisted in the German army where he rose to the rank of Second Lieutenant (R. 148–149). He was captured by the British in 1917, and remained a prisoner of war in England until 1919 (R. 97, 149). He then returned to Germany and studied at the University of Darmstadt, where he received a degree in electrical engineering (R. 150). He was married in Germany on January 20, 1927, and left for the United States about January 27, 1927; his wife joined him here in August or September of that year (R. 147, 239).

After arriving in this country the petitioner visited friends in Illinois for three months, and then settled in Kansas City, Missouri, where he soon obtained a position with the Kansas City Power and Light Company (R. 239). He remained continuously in the employ of that company, and was working there as a laboratory engineer at the time of the trial (R. 239). Immediately after he joined the company, the petitioner began to talk about Germany and its government. At that time, in 1927, he expressed great enthusiasm for the Hitler movement, which

was then still in its early stages (R. 41). His opinion of the superiority of the German people and their institutions was so open and so marked that it was found necessary to transfer him to another department in order to avoid trouble with other employees (R. 41–42).

In the years from 1932, when he began to work in the company's testing laboratory (R. 37), through 1941, the petitioner frequently expressed profound admiration for Hitler (R. 35, 43, 57, 61, 63–64, 65–66, 73, 77, 81, 83, 89, 92, 95, 96), and proclaimed the superiority of the Nazi dictatorship to American democracy (R. 32, 39, 44, 58, 66, 67, 69, 75–76, 78, 83, 84). The evidence adduced at the trial included his conversations and statements in the laboratory (R. 37–40, 58, 59, 83, 85–86), in the Kansas City School of Engineering where he was an instructor (R. 52–54, 89), in his public speeches (R. 70–73, 92, 94, 96, 278), in his church activities (R. 45–46, 73–74, 87–88, 91), in his home and social life (R. 32, 35, 38, 47, 61–62, 64–66, 68–69, 75, 78, 84, 95), and in entries made in a diary which he kept from December 1, 1938, to June 27, 1941 (R. 251–297).

The petitioner stated that he was for Hitler "100 percent" (R. 57); that we "should have a man at the head of this Country to run it like Adolf Hitler"; that Hitler was "one of the finest men in the world" and undoubtedly would some day rule this country (R. 32); that "the day will

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come that Germany will be the dominant war power," and that America would then have to "listen to Hitler" (R. 66); and that he "would be glad to live under the regime of Hitler" (R. 96). He thought that democracy was "a practical farce" (R. 83), and "on the way out" (R. 66). He expressed contempt for "the western democracies", including the United States and the American people (R. 254–255, 262–263, 265, 295, 297), and implied that only "ridiculously primitive and uneducated" persons could "really feel at home in this country" (R. 292).

An American-born citizen of German extraction who expressed opposition to Hitler was "a traitor to my country" (R. 40). He justified the German invasion of Czechoslovakia, Poland, and other countries, as "protection" from England and necessary to German existence (R. 37, 38, 48, 70, 93), and rejoiced at the news of the Allied defeat at Dunkirk (R. 85). In 1937 and 1938 he taught a Sunday School class and his frequent discussions of Germany from a pro-German viewpoint led to complaints that he was preaching Nazi philosophy to the youngsters (R. 45–46, 73–74, 87–88, 91). In a speech before a businessmen's association in April 1938, he praised the accomplishments of the Hitler government (R. 70–72, 92). He expressed a desire that German-Americans be more aggressive in their display of sympathy and loyalty to Germany (R. 260–261,

262, 278), and voiced suspicion and disapproval of loyal Americans of German extraction, some of whom he described as "spies" (R. 259, 261, 264, 268, 274, 279, 288, 292). In 1939 the petitioner's wife and two children went to Germany, where they have since remained (R. 50–51, 63, 95.) He wanted his children "to be brought up in German schools" (R. 51), and reported with satisfaction that his daughter had "done a very un-American thing" when she joined the Nazi Youth Movement in Germany (R. 77–78).

When he drank, he toasted "the welfare and the future of Germany", not the United States (R. 256). He attended meetings which were opened with the singing of the German national anthem, and where, to quote his own words, "everyone naturally arose and assumed the usual German stance with the arm extended to give the National Socialist greeting" (R. 260). He thought "it was the duty of German American citizens to stand up on their two feet and fend off all attacks on Germany" (R. 261). In March 1939, after the German occupation of Czechoslovakia, he stated: "The Jewish-American-English fortress in the heart of Central Europe has fallen. A terrible defeat for the above named powers who will probably have a difficult time recovering from this" (R. 261–262). He used the word "American" as an opprobrious epithet: "It is strange how Mrs. August Eyssell talks about Hit-

ler and Germany—the way most people talk about them here. Even Helen Eyssell, to whom I always thought Germany meant more than just an entertaining place to stay, today made it very evident that she was an 'American' girl" (R. 288). He praised a friend in these terms: "Sachs is a good fellow and a good German who has not been Americanized, that is, ruined" (R. 264).

The petitioner took the stand in his own behalf and, in response to a question by the court, stated that his attitude toward the principles of American government was the same when he took the oath in 1932 as it has been ever since (R. 182–183). He denied having made most of the anti-American, anti-democratic statements attributed to him by the witnesses for the Government (R. 160–165, 191–208), and attempted to explain or retract the various entries in his diary (R. 170–181, 188–189). He professed complete loyalty to the United States and a sincere belief in the democratic form of government. He stated that if he were ordered to do so by the military, he would participate in an invasion of Germany (R. 183).

On the basis of this evidence the district court concluded (R. 25–27) that the petitioner's certificate of citizenship was fraudulently and illegally procured by means of a false oath that he had renounced all fidelity to the German Reich and

that he would bear true faith and allegiance to the Constitution and laws of the United States. The court accordingly directed that its order of September 26, 1932, admitting the petitioner to citizenship in the United States, together with his certificate of naturalization, be cancelled (R. 27). On appeal, the judgment was affirmed by the Circuit Court of Appeals for the Eighth Circuit, with one judge dissenting (R. 338–351).

SUMMARY OF ARGUMENT

The statute requires, as a condition to an alien's acquisition of citizenship, that he take an oath renouncing absolutely and entirely all allegiance and fidelity to any other state, to support and defend the Constitution and laws of the United States, and to bear true faith and allegiance to the same. The concept of allegiance connotes all of the fidelity and devotion which a nation has a right to expect of its citizens.

Unlike *Schneiderman* v. *United States*, 320 U. S. 118, this case presents no question whether the petitioner behaved during the statutory five-year period as a person attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States. The issue in this case, ineluctably presented by the pleadings and proof, is whether the concurrent finding of the two lower courts that the petitioner's certificate of naturalization was fraudulently

and illegally procured is supported by clear, unequivocal, and convincing evidence; and whether cancellation of his citizenship was proper under the statute and the Constitution.

I

The evidence adduced at the trial convinced the district court that when the petitioner in 1932 swore that he renounced all fidelity to any foreign state, particularly the German Reich, and that he would bear true faith and allegiance to the Constitution and laws of the United States, he then subscribed to principles of National Socialism which were diametrically opposed to and irreconcilable with devotion and fidelity to the principles of freedom and democracy underlying the Constitution and laws of the United States; that his renunciation of all allegiance to the German Reich was not absolute and entire; and that his certificate of citizenship was therefore procured illegally and by fraud. The Government met the burden of proving its case by clear, unequivocal, and convincing evidence. The evidence amply supported the finding that when the petitioner took the oath of allegiance, he retained a devotion and emotional attachment to Germany which was inconsistent with his renunciation of all allegiance to that country. The evidence also showed that he subscribed to doctrines of National Socialism which were incompatible with allegiance and fidelity to the Constitution and laws of the

United States.

Long after the petitioner took the oath of allegiance to the United States his behavior and speech disclosed that he was more loyal and more faithful to Germany than he was to this country. The district court was clearly justified, in the absence of evidence indicating that a change in attitude occurred after naturalization, in concluding that he had never completely renounced all allegiance to Germany. The petitioner consistently manifested a strong sense of loyalty and devotion to Germany, and a contempt for the principles of democracy and individual liberty underlying the Constitution of the United States—feelings which he never renounced and never lost. In these circumstances it was proper to judge the character of his oath of allegiance by the statements he made to others and the sentiments he recorded in his personal diary subsequent to naturalization. These were the expressions of an intelligent, mature man—made not irresponsibly but deliberately, continuously, and persistently over a period of many years, in every phase of his activities, and without variation in theme.

While no single statement made by the petitioner was in itself conclusive proof of his lack of allegiance to the United States, their cumulative effect was highly significant. Considered as a whole, the evidence clearly showed that his entire mode of thought, his interests and his judgments, and his emotional attachments, were colored by

his devotion and fidelity to Germany; that at heart he had not fully renounced all loyalty and allegiance to the German Reich. Long after he had taken the oath to bear true faith and allegiance to the United States, the persistent emphasis of his thoughts and words was upon the superiority of the German people, their form of government, and their institutions. It was the constant subject of his conversations with others, apparently being foremost in his mind. He never evinced any concern, any praise, any respect, any love for the United States, and expressed only contempt for the democratic and American system of government.

II

The district court properly directed that the order admitting the petitioner to citizenship, together with his certificate of naturalization, be cancelled. The statute requires, as an express condition to the valid acquisition of citizenship, that an oath be taken renouncing all allegiance and fidelity to any other state. Since the petitioner, when he took such an oath in 1932, did not in fact renounce all allegiance to the German Reich, his citizenship was illegally and fraudulently procured. The statute plainly authorized cancellation of his citizenship on that ground. Neither its language nor legislative history afford a basis for reading an exception into the statute. The decisions of the lower courts are substantially uniform in holding that a false oath of allegiance

vitiates naturalization. These rulings reflect a proper appreciation by the lower courts of the great importance of the oath of allegiance in naturalization proceedings, particularly since 1926.

Cancellation of the petitioner's citizenship is not precluded by the doctrine of *res judicata*, which is inapplicable to the facts of this case. Even in the absence of statutory authorization, courts of equity have always asserted jurisdiction to set aside judgments obtained by fraud. One who fraudulently induces a court to give judgment in his favor cannot invoke the doctrine of *res judicata* for the purpose of preventing the court from setting aside the judgment for fraud. In the present case the issues of fraud and illegality were neither tendered by the Government nor determined by the court in the 1932 naturalization proceeding.

Even prior to the enactment of the Act of 1906 which explicitly conferred jurisdiction in the district courts to cancel judgments of naturalization on the ground of fraud, both federal and state courts had exercised a similar jurisdiction. And the validity of the 1906 Act has repeatedly been upheld in numerous decisions of this Court. To hold the doctrine of *res judicata* applicable here would effectively abolish the remedy of the Government to obtain cancellation of certificates of citizenship procured illegally and by fraud—a remedy plainly regarded by Congress as essential

to the scheme of naturalization adopted in 1926. Congress would thus be compelled to reestablish the old procedure under which the courts were called upon to investigate the facts relating to each petition for naturalization—a procedure which was abandoned as impractical and unsatisfactory.

To cancel the petitioner's citizenship on the ground of fraud or illegality is not to punish him for the expression of unpopular political views. Congress can unquestionably insist upon allegiance as a condition precedent to the grant of citizenship. The test of allegiance necessarily implies that inquiry may be made into convictions of a political character. While Congress could not under the First Amendment proscribe expressions of such attitudes and beliefs, it undoubtedly could make such expressions relevant in determining the fact of allegiance. To test a person's allegiance by inquiry into his expressions relevant to the question of allegiance is not to abridge his constitutional right of free speech.

ARGUMENT

For almost one hundred and fifty years Congress has required, as a condition to an alien's acquisition of citizenship, that he declare on oath that he absolutely and entirely renounces all allegiance and fidelity to the state of which he was before a subject or citizen; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and

domestic; and that he will bear true faith and allegiance to the same. Sec. 335, Nationality Act of October 14, 1940, c. 876, 54 Stat. 1137 (8 U. S. C. 735); Act of March 26, 1790, c. 3, 1 Stat. 103; Act of Jan. 29, 1795, c. 20, 1 Stat. 414; R. S. § 2165; Act of June 29, 1906, c. 3592, 34 Stat. 596, 598; Act of Oct. 14, 1940, c. 876, 54 Stat. 1137, 1157. "By allegiance is meant the obligation of fidelity and obedience which the individual owes to the government under which he lives, or to his sovereign in return for the protection he receives." *Carlisle* v. *United States*, 16 Wall. 147, 154. The concept of allegiance "connotes the emotional ties which bind the individual to a political group or association and to the symbols which represent it." C. J. Friedrich in *Encyclopedia of the Social Sciences* (1935), vol. I, p. 644. It comprehends all the loyalties and attachments which a nation has a right to expect of its citizens.

The district court found in the present case that in 1932, when the petitioner took such an oath in order to obtain a certificate of naturalization, his "real loyalty" was to the "principles of government then advocated and thereafter put in practice by Adolph Hitler," and that those principles, including government by dictatorship, German racial superiority, and denial of fundamental civil liberties, were "diametrically opposed to those of the United States" (R. 25). Upon such findings, the court held, "only one possible conclusion [is] to be reached," namely, that the "order admitting

Carl Wilhelm Baumgartner to citizenship and the certificate of citizenship granted him were obtained by fraud; they were illegally procured by means of an oath falsely made, that he had renounced all fidelity to The German Reich and that he would bear true faith and allegiance to the Constitution and laws of the United States" (R. 27).

Unlike the basis upon which this Court decided *Schneiderman* v. *United States,* 320 U. S. 118, there is no issue in this case whether the petitioner, during the five years preceding his naturalization, was a person attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States. The complaint here charged that the oath of allegiance taken by the petitioner in 1932 in order to obtain naturalization was false and fraudulent; that when he took the oath, the petitioner did not in fact intend to renounce absolutely and forever all allegiance and fidelity to the German Reich, of which he was then a subject; that he did not then in fact intend to support the Constitution and laws of the United States against all enemies, foreign and domestic; and that he did not then in fact intend to bear true faith and allegiance to the same (R. 2–3). The proof adduced at the trial convinced the district court that the petitioner had obtained naturalization by taking a false and fraudulent oath, and that his certificate of citizenship should therefore be cancelled (R. 25–27).

This finding and conclusion were sustained by the Circuit Court of Appeals (R. 338–351). We submit that the evidence supports the concurrent finding of the two lower courts, and that cancellation of the petitioner's certificate of citizenship was proper under the statute and the Constitution.

I

THE CONCURRENT FINDING OF BOTH COURTS BELOW THAT THE PETITIONER'S CERTIFICATE OF NATURALIZATION WAS ILLEGALLY AND FRAUDULENTLY PROCURED IS SUPPORTED BY CLEAR, UNEQUIVOCAL, AND CONVINCING EVIDENCE

The evidence adduced at the trial clearly supports the finding of the district court that when the petitioner in 1932 swore that he renounced all fidelity to any foreign state, particularly to the German Reich, and that he would bear true faith and allegiance to the Constitution and laws of the United States,[1] he then subscribed to principles of National Socialism which were antagonistic to and irreconcilable with devotion and fidelity to the principles of free, democratic government underlying the Constitution and laws of the United States; that his renunciation of all allegiance to the German Reich was not absolute and

[1] Such an oath was required under Section 4 of the Act of June 29, 1906, c. 3592, 34 Stat. 596, formerly 8 U. S. C. 381 (1926 ed.), which was in effect when the petitioner was naturalized. See Appendix, *infra*, p. 61.

entire; and that his certificate of citizenship was therefore illegally procured upon a false and fraudulent oath (R. 25–27). We assume, as did the Circuit Court of Appeals,[*] that the burden rested upon the Government to prove fraud by "evidence of a clear and convincing character." *Schneiderman* v. *United States*, 320 U. S. at 123. We submit that this burden was met by the proof presented by the Government.

As the Circuit Court of Appeals observed, the narrow question of fact before the trial court was "whether appellant's allegiance to this country at the time of his naturalization was unqualified and unconditional, or, stated another way, it is whether his oath of allegiance was made without any mental reservation whatsoever in favor of the country of his origin, the German Reich" (R. 347). Determination of this issue involved an inquiry into the state of the petitioner's mind in 1932, when he took the required oath of allegiance. That the misrepresentation attributed to the petitioner was as to the state of his mind did not make it any the less a misrepresentation of fact: "* * * the state of a man's mind is as much

[*] The opinion of the Circuit Court of Appeals explicitly states: "In an action to vacate a judgment of naturalization on the ground that it was obtained by fraud, the burden is upon the United States to prove the charges of its complaint by evidence which is unequivocal, clear, and convincing" (R. 346). Consequently, the petitioner is in error in implying (Brief, p. 11) that the Circuit Court of Appeals did not apply the rule as to burden of proof established in *Schneiderman* v. *United States*, 320 U. S. 118.

a fact as the state of his digestion. It is true that it is very difficult to prove what the state of a man's mind at a particular time is, but if it can be ascertained it is as much a fact as anything else." Bowen, L. J., in *Edgington* v. *Fitzmaurice*, 29 L. R. Ch. Div. 459, 483 (1885). See *Seven Cases* v. *United States*, 239 U. S. 510, 517–518, and cases cited.

The state of a man's mind at a particular time may conceivably be shown in a variety of ways. Since a court cannot look into the inner recesses of a man's mind, it must necessarily rely upon external manifestations, his words and his deeds. The clearest kind of legal evidence upon such an issue would be his contemporaneous admissions. But proof of this character is available only in the rarest and most exceptional case; it is inconceivable that Congress intended to limit the courts, in denaturalization proceedings based on fraud and illegality, to evidence of such a nature. If this were so, almost every alien who illegally procured citizenship upon the basis of a false representation as to the state of his mind would be enabled to retain citizenship which he never lawfully acquired and to which Congress never intended him to be entitled. For all practical purposes, the statutory requirement that an applicant for citizenship must take an oath of allegiance to the United States would be rendered wholly nugatory, and the oath itself would become an empty, meaningless formality.

In the present case the evidence before the trial court presented a complete picture of the petitioner, his background, his mental and emotional associations, and his outlook on life. The petitioner voluntarily took the stand, and testified at great length.[3] The court had before it the petitioner's personal, intimate thoughts as recorded by him in a private diary. More than thirty witnesses—his colleagues, his friends and acquaintances, his neighbors—testified with regard to views he had expressed. The evidence consisted principally of statements and admissions made subsequent to the taking of the oath of allegiance; but in cases of this character such evidence has special probative force. The oath of allegiance looks to the future; it requires an intention thereafter to bear true faith and allegiance to the United States. Not until the very moment of taking the oath is an applicant required to renounce allegiance to his former sovereign. Consequently, conduct subsequent to the date of naturalization is of great significance in determining the validity of the oath. Cf. *United States* v. *Kramer*, 262 Fed. 395, 397 (C. C. A. 5). Although ordinarily the probative force of later conduct grows weaker with the lapse of time,[4] this

[3] The petitioner was his own principal witness. His testimony (R. 145–230) and diary entries (R. 251–297) cover 131 of the 266 pages in the printed record containing the evidence before the district court (R. 31–297).

[4] See *Luria* v. *United States*, 231 U. S. 9, 27.

is not true with respect to the issue of allegiance. It is reasonable to assume that an adult immigrant who has for years given his allegiance to another state will not, at the time of taking the oath, lose all sentimental attachment to his native country. But it is also reasonable to expect that, if he has intentionally and in good faith transferred his allegiance and fidelity to the United States, his attachment to his native country will grow weaker with time. Loyalty and allegiance to one's country are not feelings which change from day to day. They are matters of slow growth and experience, involving the imponderables of emotional attachments and prejudices. A new citizen's devotion to his adopted land would naturally grow as he acclimates himself, makes friends, and establishes his place in the community. As these ties are intensified, his faith and allegiance to his new country should become stronger. An oath of allegiance, if honestly and sincerely taken, acquires strength and roots.[5]

[5] The analysis made by Judge Cushman in *United States* v. *Herberger*, 272 Fed. 278, 291 (W. D. Wash., 1921), is relevant here:

"Loyalty or allegiance is, necessarily, of slow growth; therefore, somewhat involuntary, not fully subject to the will. Those who lightly, for temporary advantages, undertake to change their allegiance, are liable to overlook the deep-seated nature of this feeling; but the fact that not until afterwards, in times of stress, is it made manifest that the desires, suffered to lie dormant, are stronger for their native than their adopted country, although this fact may not be fully realized at the time of their naturalization, renders it

When, therefore, years after his naturalization, and particularly in a period of strained relations between his native country and the United States, a naturalized citizen is shown to be more loyal and more faithful to the land of his birth than to his adopted country, a court is justified, in the absence of evidence indicating that a change in attitude occurred after naturalization, in concluding that such a person had never fully renounced all allegiance to the country of his origin. This is the rationale of a number of denaturalization

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none the less a legal fraud for the applicant to fail to disclose his true, although latent, feeling in such a matter."

See also the discussion of Judge Bright in *United States* v. *Kuhn*, 49 F. Supp. 407, 412 (S. D. N. Y., 1943):

"* * * each defendant renounced all allegiance and fidelity to his homeland; he agreed to support and defend the Constitution and our laws against all enemies, and his faith and allegiance was to be true. These three requirements preclude any divided concept. They contemplate full and complete citizenship. It is to be expected, of course, that new citizens will not have completely divested themselves of some sentimental feeling for their old country. It is also to be expected that as the years grow longer after their oath that this sentiment will diminish and their love for their adopted land will increase. * * * The test of how strong those sentiments were at the taking of the oath and how much, if at all, they created a mental reservation or purpose of evasion as to any or all parts of the oath, may be presumed from defendants' subsequent actions and statements. Particularly is this so when the real test comes, when war or dispute between their new country and their old, is imminent or declared. If it appears that they then fail in allegiance, fidelity or faith, it may fairly be presumed that they did not absolutely and entirely renounce their former allegiance, and this presumption is all the stronger when the period which has elapsed since the oath is longer."

cases arising during World War I.[6] It has been reaffirmed in numerous recent decisions of the lower courts.[7]

We submit that this rationale is sound and applicable to the facts of the present case. There was no evidence of any change in the petitioner's attitude subsequent to his naturalization.[8] The petitioner made no contention that his mental attitude when he was naturalized in 1932 was not the same as it was in later years (see R. 182–183). He consistently manifested a strong sense of loyalty and devotion to Germany, and a contempt for the principles of freedom and democracy underlying the Constitution of the United States—feelings which he never renounced and never lost. His enthusiasm for the Hitler movement antedated by several years his naturalization and Hitler's accession to power (R. 40–41). In these

[6] *Schürmann* v. *United States*, 264 Fed. 917, 920 (C. C. A. 9), appeal dismissed, 257 U. S. 621; *United States* v. *Kramer*, 262 Fed. 395, 397 (C. C. A. 5); *United States* v. *Herberger*, 272 Fed. 278, 291 (W. D. Wash.); *United States* v. *Wursterbarth*, 249 Fed. 908, 911 (D. N. J.).

[7] *United States* v. *Schlotfeldt*, 136 F. (2d) 935 (C. C. A. 7); *United States* v. *Haas*, 51 F. Supp. 910, 913 (N. D. N. Y.); *United States* v. *Jogwick*, 51 F. Supp. 2, 6 (N. D. W. Va.); *United States* v. *Kuhn*, 49 F. Supp. 407, 412 (S. D. N. Y.); *United States* v. *Schuchhardt*, 49 F. Supp. 567, 570 (N. D. Ind.); *United States* v. *Wezel*, 49 F. Supp. 16, 18–19 (S. D. Ill.); *United States* v. *Bergmann*, 47 F. Supp. 765, 767 (S. D. Cal.); *United States* v. *Mickley*, 44 F. Supp. 735, 738 (E. D. Mich.).

[8] Cf. *United States* v. *Polzin*, 48 F. Supp. 476 (D. Md.), where the court found that a visit to Germany after naturalization had engendered the subsequent disloyalty.

circumstances, we submit, it was proper for the district court to judge the character of his oath of allegiance by the statements which the petitioner made and the sentiments he recorded in his personal diary subsequent to his naturalization.

The petitioner is an educated and intelligent man. He received a classical high-school education in Germany, was there awarded the equivalent of a master's degree in electrical engineering (R. 146, 150), and spoke or read German, Spanish, Italian, French, and English (R. 154, 297). He liked to read (R. 46, 48–49, 139, 164, 276, 278), and was even familiar with the works of Longfellow, Dickens, and Cooper before he came to this country (R. 152, 154). In the years 1936 to 1938, he was an instructor at the Kansas City School of Engineering (R. 52, 89). He was characterized by one witness as "very brilliant" and "a fine thinker" (R. 139), by another as a man who gave evidence of education and culture (R. 81), and by a third as having the reputation of being very good in his profession (R. 107). He frequently discussed philosophical, political, and religious subjects with the minister of his church (R. 139). He conducted a Sunday School class (R. 46). He occasionally made speeches at public meetings (R. 70–73, 96, 278). His diction on the witness stand, in his diary, and in his letters (particularly the letter to Dr. North—Defendant's Exhibit A, R. 231–232), leaves little doubt of his

ability to express his thoughts clearly. We believe, therefore, that the district court was entitled to accept the statements and writings of the petitioner at their face value. These were the expressions of an educated mature man—made not irresponsibly but deliberately, continuously, and persistently over a period of many years, in every phase of his activities, and without variation in theme.

More than four years before the Hitler government came into power in Germany, the petitioner expressed enthusiasm for the National Socialist movement. Immediately upon beginning work with the Kansas City Power and Light Company in August 1927, about two months after he filed his declaration of intention to become an American citizen and to renounce all allegiance to Germany (R. 243–244), his conversation was devoted largely to praise of the German people and their institutions, but not of the Weimar Republic then in existence (R. 41). His statements were "so strong" that it was necessary to transfer him in order to avoid trouble with his co-workers (*ibid.*). The witness Sherman, with whom the petitioner worked in the company's testing laboratory for over ten years, testified that almost from the time the petitioner entered the laboratory in 1932, he began comparing the United States with the German government (R. 37). Throughout the years that these men worked together, the petitioner consistently praised Hitler

as the leader who had restored the German people to their proper place in the world.

This testimony was corroborated by the witness Heinrich, also an employee of the Kansas City Power and Light Company, who saw the petitioner in the laboratory about twice each week beginning in late 1931 or 1932. In their conversations, the petitioner always asserted the superiority of German methods and the German form of government. Heinrich was a native-born American citizen of German extraction, and when in 1938 he criticized Hitler for his persecutions of minorities and characterized the actions of the Nazis as not being for the good of the German people, he testified that the petitioner called him "a traitor to my country" (R. 39–40).

The witness Hawley, another employee who became acquainted with the petitioner in 1935, testified that the constant subject of the petitioner's conversation was the superiority of Germany to the United States. On one occasion the petitioner stated that he could not see what interest the United States would have in entering the war, his attitude being that if the United States were governed by Germany as a result of the war, it should make no difference since we are now controlled by England (R. 58–59).

The witness Sloan joined the company's testing laboratory in 1938. In that and the following year he conversed frequently with the petitioner. Their conversation almost always re-

volved about Hitler and the German government. He testified that the petitioner said that Hitler would be recorded in history as the greatest man of his time, and that "the democracy of the United States was a practical farce" (R. 83). After the Allied defeat at Dunkirk, the petitioner came to work with a "very jubilant air" about him and told the others "today I am rejoicing" (R. 85).

Two other employees in the company testified regarding their conversations with him. To one he said, after war broke out in Germany, that he was not particularly worried about his family since they were as safe in Germany as they would be here (R. 51). To the other he said that his family had gone to Germany because he wanted his children to be brought up in German schools. The petitioner's speech and behavior were of such a character that on one occasion this latter witness accused him of being a spy (*ibid.*).

The petitioner's conduct and speech outside the laboratory also reflected his basic loyalty to Germany and antipathy to the free democratic principles underlying the form of government of the United States. His conversations with other instructors at the Kansas City School of Engineering in 1937 and 1938 constantly dwelled upon the virtues of Germany; his thesis was that the German race was superior to others; he ridiculed the American government and characterized Germany as "the right form of government"

(R. 52–54). In a speech before a businessmen's association in April 1938, he praised the German form of Government, expressing his approval of government by a dictator (R. 70–71). In November 1938 he made another speech at Overland Park, Kansas, in which he stated that he was a great admirer of Hitler, that he was in sympathy with his policies, and that he would enjoy living in Germany under the Hitler regime (R. 93–94, 96).

The petitioner's devotion to Germany and National Socialism dominated even his religious activities. In the period from September 1937 to June 1938, when he conducted a Sunday School class, he rarely resisted the temptation to present his views on this subject to his pupils. Almost every Sunday he praised and justified the actions of the German army and the German government (R. 91). In his conversations with the school superintendent, the petitioner maintained that the Nazi type of regimentation was superior to democracy (R. 44). He accepted the Nietzschean philosophy that the end justifies the means, and that force is the ultimate, decisive factor in human affairs (R. 49). At a dinner in the church, the petitioner expressed warm admiration and sympathy for the policies of the Hitler government (R. 81–82).

In the fall of 1939 he announced that his daughter had joined the Nazi Youth movement in Germany, and sarcastically described this ac-

tion as "a very un-American thing" (R. 77–78). After the German army had overrun Poland, he stated that we should have a man like Hitler to run the United States, and that there was no doubt that Hitler would rule this country some day and make his home in New York City (R. 32). To a mechanic who repaired his car and who expressed the belief that Hitler should be hanged because of his brutality, the petitioner replied: "If you knew Mr. Hitler like I do, you wouldn't say those things * * * I am for him 100 percent" (R. 57).

The entries made by the petitioner in the personal diary which he kept from December 1, 1938, to June 27, 1941 (R. 251–297), are especially significant as evidence of his state of mind. As he himself testified, the diary laid bare his innermost feelings (R. 216–218). These entries reveal that his devotion to Germany was so deep-seated that it persisted many years after he had taken the oath renouncing absolutely and entirely all allegiance to the Reich:

The petitioner suggests in his brief here (p. 18), apparently for the first time, that the English translation of the diary entries (Govt. Exhibit 9, R. 251–297) is neither accurate nor fair. The record shows, however, that the translation was made by a thoroughly competent person (R. 108), that the exhibit omitted only such trivia as "[the petitioner] got up in the morning, read the paper and took a walk around the block" (R. 109), and that the translator fairly conveyed the sense of the German words employed by the petitioner (R. 108–113). Counsel for the petitioner explicitly stated at the trial that he had "no objection" to the admission of the translation (Tr. 206).

December 22, 1938:

* * * It is an extremely original idea and is another proof of what an abundance of ideas the Germans have as compared to the pedantic, standardization-minded Americans. The only ones who have any ideas here are the Jews and their ideas are vile, mean, and malicious.

The answer of the American Government to the German protest against Ickes' common insults is so arrogant and brazen that it can have only one result, namely, to make the United States more unpopular and despised, not only in Germany but in the entire world, than it already has been without this * * *. (R. 254.)

January 7, 1939:

* * * Erich Sachs, of our Steuben Unit, came later to take care of certain preparations regarding solicitation of new members. Then we drank a bottle of Pschorr brew together to the welfare and the future of Germany * * *. (R. 256.)

February 19, 1939:

I want to add that the Mottberg clique of the Turnverein wanted to forbid us to display the German flag next to the American at the Winter Aid fair. At a special meeting of the board of directors of the Turnverein, Mottberg was persuaded to give in whereupon Dr. Lyon, an English-American, resigned as director. The entire situation shows the sad condition of Germandom in various circles. (R. 262.)

February 25, 1939:

This Mr. Lagna opened the meeting with the German national anthem, whereupon everyone naturally arose and assumed the usual German stance with the arm extended to give the National Socialist greeting. I immediately had the feeling that something seemed to be wrong. This feeling grew stronger when Lagna, in his speech, painted the situation of the German Americans very black and stated that we could really do nothing except to have an occasional congenial get-together such as this one. In other words, we meet behind closed doors and darkened windows, sing the German national anthem courageously, give the National Socialist salute even more bravely, and then decide that we must all be nice and quiet, that we can do nothing, and that things might even get worse.

Later in the course of the evening I said to one of the men, whose name I do not remember and who wore the "D" insignia on his lapel, that in my opinion it was the duty of German American citizens to stand up on their two feet and fend off all attacks on Germany. Thereupon this cautious man replied that we could not do this since we might lose our jobs * * *. (R. 260.)

March 2, 1939:

* * * On this occasion I became better acquainted with Attorney Otto Schmid, the democratic politician. * * * Schmid probably had no difficulty vindicating him-

self because I think this fellow is a spy who tells the authorities everything that is going on in German American circles and who has set himself the task of seeing to it that the German herd of people continues to travel in the right direction * * *. (R. 261.)

March 15, 1939:

Germany occupies Bohemia and Moravia. End of Czechoslovakia. Hitler goes to Prague. That ends this episode.

The Jewish-American-English fortress in the heart of Central Europe has fallen. A terrible defeat for the above-named powers who will probably have a difficult time recovering from this * * *. (R. 261–262.)

March 23, 1939:

Today I heard the radio broadcast of the entrance of Hitler into Memel. Dr. Neumann spoke and then Hitler himself. The church bells could be heard during the entire broadcast. This ends another of the crazy doings of the western democracies * * *. (R. 263.)

March 29, 1939:

* * * Sachs is a good fellow and a good German who has not been Americanized, that is, ruined. (R. 264.)

April 22, 1939:

In the evening I went with Schwedleis to hear a talk by a German student in the Turner Hall. * * * One cannot blame him for being so enthusiastic about the new Germany and for speaking so disdainfully about America in spite of the fact that he

is probably acting contrary to instructions. (R. 267.)

April 28, 1939:

Got up at 4:30 to hear Hitler's speech. There are no words to describe how wonderful it was. (R. 267.)

February 15, 1940:

Went to Parkville in the evening and spoke to about 200 students and teachers on National Socialism. The talk was arranged by the YMCA, the German Club, and the International Relations Club. Took Juanita and Davis home to Furrs. (R. 278.)

February 22, 1940:

Otto Schmidt, lawyer and "Assistant Federal District Attorney," is the chairman of the Association. I have always suspected Schmidt in his capacity as leader of the German organizations of being more or less of a spy whose job it is to see what goes on in German circles. We Steubens agreed to join the Round Table permanently and in this way it will be possible to watch Schmidt more closely. Perhaps I am allowing my distrust to go a little too far, but at any rate it is better to be careful. (R. 279.)

June 25, 1940:

Stayed home in the evening. Mrs. Eyssell showed me her Red Cross button which she received for her donation to the Red Cross. This is a fund which is intended ex-

clusively for England and the Jews and, therefore, against Germany. Comment superfluous. (R. 287.)

July 27, 1940:

* * * It is strange how Mrs. August Eyssell talks about Hitler and Germany—the way most people talk about them here. Even Helen Eyssell, to whom I always thought Germany meant more than just an entertaining place to stay, today made it very evident that she was an "American" girl. (R. 288.)

August 28, 1940:

Meeting of the Round Table in the evening concerning the holding of German Day. Lukewarm sentiment. Otto Schmid comes out openly as an enemy of Germany * * *. (R. 288.)

November 18, 1940:

Went to Befferts in the evening. Both are ridiculously primitive and uneducated. They really feel at home in this country just like all other people of their type. (R. 292.)

March 25, 1941:

This morning I heard the broadcast of the ceremony in connection with Yugoslavia's entrance into the three-power pact in Vienna. The rage of the English and the "Americans" knows no bounds. * * * In the meantime, the English and the "Americans" are gnashing their teeth. * * * Well, these gentlemen

> will probably have to suffer more attacks of rage before they finally realize that the world has already passed them by. (R. 295.)
>
> *June 17, 1941:*
>
> The whole country is under the influence of the insane actions of the Government in Washington which have the character of wild, unbridled despotism. Practically no German citizen can leave the country. They are held as hostages, say the radio announcers. In contrast to this, Germany has always treated Americans with the greatest respect. Went to the movies in the evening. (R. 297.)

Other pertinent entries are set forth in the opinion of the Circuit Court of Appeals, and for that reason are not here repeated. In general, they show great admiration for Hitler (R. 258, 267, 296); desire that Hitler should rule the United States (R. 32, 58, 66); happiness over German military successes (R. 261, 262, 263, 285); resentment of any criticism of the Nazi regime (R. 257, 258, 296); impatience at the failure of certain German-American organizations to be more aggressive in their display of German sympathies (R. 260, 261, 262, 273, 278, 288, 294); suspicion and disapproval of pro-American persons of German extraction (R. 253, 259, 261, 264, 268, 269–270, 274, 278, 279, 281, 282, 288, 292); and contempt for the western democracies, including the United States (R. 254–255, 262–263, 265, 266, 267, 271, 293, 295, 297).

While no single remark or diary entry was in itself sufficient proof of the petitioner's lack of allegiance to the United States, their cumulative significance is inescapable. Considered as a whole, the evidence clearly showed that the petitioner's entire mode of thought, his interests and his judgments, and his emotional attachments, were colored by a strong devotion and fidelity to Germany; that at heart he had not fully renounced all loyalty and allegiance to the German Reich. Long after he had taken the oath to bear true faith and allegiance to the United States, the persistent emphasis of his thoughts and his words was upon the superiority of the German people, their form of government, and their institutions. It was the constant subject of his conversations with others, and apparently was foremost in his mind. He never evinced any concern, any praise, any respect, any love for the United States. He was contemptuous of the democratic and American system of government (R. 53–54, 58, 64, 69, 83, 84, 265, 291), and predicted that the democracies were "on the way out" (R. 66, 295). He preferred the totalitarian rule of a dictator (R. 78, 84). The President's speech concerning protection of freedom of thought was to him "laughable" (R. 255, 69). To be Americanized was to be "ruined" (R. 264). He could not understand Germans who felt at home in this country or who criticized Germany (R. 268, 288).

292). It seemed to him natural, and apparently desirable, that the United States should one day be ruled by Germany (R. 32, 58, 66).

In striking contrast to his antagonistic attitude toward the United States was the petitioner's fidelity and allegiance to the German Reich. He was never critical of Germany, the German people, or Hitlerism. He defended and justified every action taken by the Nazis (R. 40, 47–48, 61, 70, 72, 73, 74, 82, 83, 89, 91, 92, 95, 96, 259, 264, 267, 275, 295). The national anthem which he recognized was the German one (R. 260–261); the country to whose future and welfare he drank was Germany, not the United States (R. 256); an American citizen of German extraction who criticized Hitler was regarded by him as a "traitor" to his country (R. 40).

In his own defense, the petitioner failed to produce a witness who could testify to a single affirmative act or expression evidencing any fidelity or devotion to the United States. His witnesses could testify to no more than that they had heard nothing of a disloyal nature concerning the petitioner, and that they believed him to be a good citizen. As the Circuit Court of Appeals observed, such testimony was "of little or no probative value on the question of fraud in his oath of allegiance at the time of his naturalization. Good moral character is not inconsistent with loyalty to the German Reich * * *" (R. 347). See

United States v. *Haas,* 51 F. Supp. 910, 913 (N. D. N. Y.); *United States* v. *Herberger,* 272 Fed. 278, 289 (W. D. Wash.); *United States* v. *Jogwick,* 51 F. Supp. 2, 7 (N. D. W. Va.); *United States* v. *Reinsch,* 50 F. Supp. 971, 972 (W. D. Wash.); *United States* v. *Wezel,* 49 F. Supp. 16, 17 (S. D. Ill.); *United States* v. *Bergmann,* 47 F. Supp. 765, 769 (S. D. Cal.); *United States* v. *Wursterbarth,* 249 Fed. 908, 910 (D. N. J.).

We submit that the evidence before the trial court clearly and convincingly supports his finding that the petitioner never in fact renounced all allegiance to the German Reich; that he believed in principles of National Socialism which were antagonistic to and irreconcilable with devotion and loyalty to the principles of democracy and individual liberty underlying the Constitution and laws of the United States; and that he never bore and never intended to bear true faith and allegiance to the United States. This Court may take notice that the doctrines of National Socialism are wholly repugnant to the American conception of democratic government and personal liberty. See *National Socialism, Basic Principles, Their Application by the Nazi Party's Foreign Organization, and the Use of Germans Abroad for Nazi Aims,* Department of State, Publication No. 1864, December 1, 1942. Expert testimony on this subject was heard by the trial court (R. 114–138). The decisions of the lower

courts are unanimous in holding that a person cannot approve and extol the principles of National Socialism and at the same time bear true faith and allegiance to the Constitution and the laws of the United States. *United States* v. *Schlotfeldt*, 136 F. (2d) 935 (C. C. A. 7); *United States* v. *Bergmann*, 47 F. Supp. 765 (S. D. Cal.); *United States* v. *Kuhn*, 47 F. Supp. 407, 413, 414 (S. D. N. Y.); *United States* v. *Schuchhardt*, 49 F. Supp. 567, 569–570 (N. D. Ind.); *United States* v. *Wezel*, 49 F. Supp. 16, 19 (S. D. Ill.); *United States* v. *Ritzen*, 50 F. Supp. 301, 302 (S. D. Tex.); *United States* v. *Ebell*, 44 F. Supp. 43, 46 (W. D. Tex.); *United States* v. *Haas*, 51 F. Supp. 910, 911 (N. D. N. Y.). "One cannot profess or serve both, without disloyalty to one." *United States* v. *Bergmann*, *supra*, at 767.

II

CANCELLATION OF THE PETITIONER'S CITIZENSHIP WAS PROPER UNDER THE STATUTE AND THE CONSTITUTION

Since the petitioner's oath of allegiance was found to have been false and fraudulent, the district court properly directed that the order admitting him to citizenship, together with his certificate of naturalization, be cancelled (R. 27). The validity of this decree was upheld by the Circuit Court of Appeals (R. 338–352). We submit that the taking of a false oath of allegiance when

the applicant for citizenship does not renounce all allegiance to the country of his origin, and believes in principles of government which are incompatible with devotion and fidelity to the United States, constitutes fraud and illegality within Section 338 of the Nationality Act of 1940; and that the Act as thus applied is not unconstitutional.

A. CANCELLATION OF THE PETITIONER'S CITIZENSHIP ON EITHER THE GROUND OF FRAUD OR ILLEGALITY WAS AUTHORIZED BY THE STATUTE

The first statute to provide for the cancellation or revocation of naturalization was the Act of June 29, 1906, c. 3592, 34 Stat. 596. Section 338 of the Nationality Act of October 14, 1940, c. 876, 54 Stat. 1137, 1158, 8 U. S. C. 738, substantially incorporates Section 15 of the 1906 Act (see Appendix, *infra*, pp. 60–61). It provides, in pertinent part, as follows:

> It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 301 [§ 701 of this title] in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and cancelling the certificate of naturalization on the ground of fraud or on the

ground that such order and certificate of naturalization were illegally procured.

Section 4 of the Act at the time of the petitioner's naturalization (see Appendix, *infra*, p. 61),[10] provided as follows:

> He [any alien] shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

The language of the statute authorizing cancellation of citizenship on the grounds of fraud and illegality is absolute and unqualified. It does not except fraud or illegality which consists of a false representation to the court as to the applicant's intention to renounce all allegiance to the country of his origin and to bear true faith and allegiance to the United States. And there is no

[10] As has already been shown (*supra*, pp. 14–15), the statutory requirement that an oath of allegiance to the United States be taken by an alien is almost one hundred and fifty years old.

basis upon which such an exception can be read into the unequivocal terms of the statute.

The legislative history of the 1906 Act discloses that Congress was principally concerned with cases in which naturalization was fraudulently procured. The report of the House Committee on Immigration and Naturalization, to which was referred the bill which eventually became the 1906 Act, stated as follows (H. Rep. No. 1789, 59th Cong., 1st sess., p. 2):

> With the great influx of foreigners who have in recent years come to our shores and who are yearly coming in increasing numbers, and who seek naturalization under our laws, a very loose, unsatisfactory, and careless method of naturalization has grown up, leading to the grossest character of frauds against American citizenship: The conditions that have been revealed by special investigations of the frauds committed against the naturalization laws render wholly unnecessary any argument upon the necessity at this time of fully exercising all the authority in naturalization matters conferred by the Constitution upon Congress.
>
> * * * * *
>
> The worst and most glaring frauds have consisted in perjury, false impersonation, and the sale and use of false and counterfeit certificates of naturalization. * * * In order to correct the abuses that have been disclosed it is imperative, in the judgment of your committee, that a law should be

> enacted prescribing a fixed and uniform system and a code of procedure in naturalization matters.

The report of the Senate Committee on Immigration repeated this statement in *haec verba*. See S. Rep. No. 4373, 59th Cong., 1st sess., pp. 1–2. Representative Crumpacker, one of the sponsors of the legislation, emphasized during the debates that the legislation authorized cancellation where the certificate of citizenship was procured by practicing a fraud on the court (40 Cong. Rec. 7040):

> If any alien shall impose upon the court by perjured testimony, or if a certificate has been issued in violation of law, the bill makes the certificate invalid and authorizes proceedings in any court of competent jurisdiction to cancel the certificate of citizenship * * * A certificate tainted with fraud is in the sense of the law no certificate at all.

While this is the first case in this Court presenting the question whether a false oath of allegiance may be made the basis upon which a certificate can be cancelled under the statute as having been fraudulently or illegally procured, the question has frequently arisen before the lower courts. The decisions are substantially uniform in holding that a false oath of allegiance vitiates naturalization. See *Schurmann* v. *United States*, 264 Fed. 917 (C. C. A. 9), appeal dismissed, 257 U. S. 621; *United States* v. *Kramer*, 262 Fed. 395 (C. C. A. 5); *United States* v. *Schlotfeldt*, 136 F.

(2d) 935 (C. C. A. 7); *United States* v. *Herberger*, 272 Fed. 278 (W. D. Wash.); *United States* v. *De Tolna*, 27 F. (2d) 984 (E. D. N. Y.); *United States* v. *Wursterbarth*, 249 Fed. 908 (D. N. J.); *United States* v. *Ebell*, 44 F. Supp. 43 (W. D. Tex.); *United States* v. *Mickley*, 44 F. Supp. 735 (E. D. Mich.); *United States* v. *Bergmann*, 47 F. Supp. 765 (S. D. Cal.); *United States* v. *Kuhn*, 49 F. Supp. 407 (S. D. N. Y.); *United States* v. *Schuchhardt*, 49 Supp. 567 (N. D. Ind.); *United States* v. *Dietz*, 52 F. Supp. 201 (N. D. Cal.); *United States* v. *Wezel*, 49 F. Supp. 16 (S. D. Ill.); *United States* v. *Jogwick*, 51 F. Supp. 2 (N. D. W. Va.); *United States* v. *Haas*, 51 F. Supp. 910 (N. D. N. Y.); *United States* v. *Wolter*, 53 F. Supp. 417 (W. D. Pa.).

We submit that these decisions reflect a proper appreciation by the lower courts of the great importance of the oath of allegiance in naturalization proceedings. The oath of allegiance has become particularly significant as a consequence of the Act of June 8, 1926, c. 502, 44 Stat. 709. Prior to the 1926 amendment, the Act of 1906 provided for a full judicial hearing upon the merits of a petition for naturalization. As was observed in *Schneiderman* v. *United States*, 320 U. S. 118, 123, the 1906 Act required that notice of the filing of the naturalization petition be given 90 days before the petition was acted on (Section 6); the hearing on the petition took place in open court (Section 9); and the Government had a right to

appear, to cross-examine the applicant and his witnesses, to introduce evidence, and to oppose the petition (Section 11).

This duty became so burdensome upon the federal courts, however, that Congress in 1926 introduced an entirely new procedure in naturalization proceedings. The background of the 1926 amendment is illumined by a letter written by Chief Justice Taft on May 25, 1926, to the chairman of the House Committee on Immigration and Naturalization (see H. Rep. No. 1328, 69th Cong., 1st sess., p. 2):

> I have examined Senate bill 4251 as it has been submitted to the House, and I sincerely hope that it will pass, because I think it will very much shorten the time which the Federal district judges have had to take in the matter of naturalization. I could have wished that the necessity for administering the oath by a Federal judge might also have been dispensed with, because in great centers where there are many applicants for naturalization there is much interference with the regular business of the court in criminal and civil matters by the presence in the corridors and in the court rooms of the applicants for naturalization, their witnesses, and their families. The time of one district judge in some districts for 2 or 3 days in the week is consumed with the hearings of naturalization cases. It can be just as well done by the examiners selected by the

> senior district judge, as provided in this bill, and the hanging about the court rooms and the court corridors of the applicants and the witnesses can be very largely avoided by requiring them to attend upon the examiners at a different place. If there are to be but few personal examinations by the judges, as this act indicates, the matter of the administering of the oaths of allegiance to those who are admitted can be disposed of in very much less time than under the present system. I earnestly hope that the bill will pass.

Judges Learned Hand, Augustus N. Hand, George W. Anderson and Edward J. Henning also appeared before the Committee and testified that the district courts did not have the necessary facilities for determination of the facts as to each of the many applicants for citizenship (H. Rep. No. 1328, 69th Cong., 1st sess., p. 1). And the Secretary of Labor and the Commissioner of Naturalization had for many years recommended legislation "to relieve the courts in the large cities from the disorderly congestion of the unnecessary number of witnesses with the applicants at naturalization hearings." (*Ibid.*)

As a result of these weighty recommendations, Congress amended Section 4 of the Act of 1906. The procedural changes effected by the 1926 amendment (Act of June 8, 1926, c. 502, 44 Stat. 709) are summarized in the *Report Proposing a Revision and Codification of the Nationality Laws*

of the United States, prepared at the request of the President of the United States, by the Secretary of State, the Attorney General, and the Secretary of Labor (June 13, 1938), pp. 45–46:

> The judges of the United States district courts are authorized to designate naturalization examiners or officers to conduct preliminary hearings upon petitions for naturalization in such courts and to present to the courts findings and recommendations thereon. Such examiners or officers are empowered to take testimony concerning any matter touching or in any way affecting admissibility to naturalization, to subpena witnesses, and to administer oaths, including the oath of the petitioner to his petition and the oaths of his witnesses. The findings of such examiners or officers are required to be submitted to the court at the final hearing upon the petition with recommendations for granting, denial, or continuance, with the reasons therefor.
>
> If the facts are favorable, the witnesses are excused from appearing in open court, the petitioner alone presenting himself in order to take the oath of allegiance. The judge to whom such findings and recommendations are submitted is required to approve, by written order, the recommendations, with such exceptions as he may deem proper. Lists of the petitioners for naturalization whose cases are heard and recommended are required to be filed perma-

> nently of record in the court and with the Commissioner of Immigration and Naturalization.
>
> While hearing under the 1926 Act does not require the examination of the petitioner and witnesses under oath before the court and in the presence of the court, the court may upon its own initiative at its discretion, and if required upon the demand of the petitioner, have an examination of the petitioner and his witnesses made under oath before the court and in the presence of the court.

Congress in 1929 further amended the statute by omitting from Section 4 the words "It shall be made to appear to the satisfaction of the court admitting any alien to citizenship" that the alien possesses the requisite qualifications. The statute since 1929 has provided that "No alien shall be admitted to citizenship unless" he possesses these qualifications. Act of March 2, 1929, c. 536, § 6 (b), 45 Stat. 1513 (see Appendix, *infra,* pp. 63–64).

A very recent opinion, as yet unreported, of Judge Fee in *United States* v. *Scheurer,* decided by the District Court of the United States for the District of Oregon on March 20, 1944, contains an authoritative description of the manner in which the naturalization process actually functions in the district courts: The judges no longer designate the naturalization examiners, who are now completely under administrative control (Sec. 333, Act of October 14, 1940, c. 876, 54 Stat.

1156). The district court exercises no supervision over the administrative proceedings conducted by the examiners. Only in exceptional cases are judicial hearings held in court. Normally the judge does not see any witnesses; he does not hear any evidence; nor does he even have the petition for naturalization before him. No actual findings or conclusions or reasons for the recommendations are ever stated to the court by the examiners. The final hearing before the court consists merely of the presentation of the examiner's recommendation for the admission of a class of applicants—sometimes including as many as several hunderd persons—and the administration of the oath of allegiance, usually accompanied by an address of the court welcoming the applicants into the ranks of citizenship. No actual hearing, involving the testimony of witnesses and the like, is held by the court unless demanded by an applicant after an adverse finding by the naturalization examiner.

The records of the Immigration and Naturalization Service show that during the fiscal years 1927 to 1934, inclusive, of 791,724 cases in which naturalization examiners conducted preliminary hearings for the courts, heard the testimony, and made recommendations, 782,955, or 98.89% of the recommendations were approved. See *Report Proposing a Revision and Codification of the Nationality Laws of the United States, supra,* at p. 47.

It is obvious, therefore, that the oath of allegiance taken by an applicant in his petition for naturalization and in open court constitutes the principal "testimony" which is normally heard by the district court in determining whether a certificate of citizenship should be granted. The oath constitutes a representation by the applicant that he is fitted for citizenship, that he will support and defend the Constitution and laws of the United States, that he renounces all allegiance to the country of his origin, and will bear true faith and allegiance to the United States, without mental reservation or purpose inconsistent therewith—"matters which are of the essence of the statutory requirements" (*United States* v. *Macintosh*, 283 U. S. 605, 616).

In *United States* v. *Ginsberg*, 243 U. S. 472, 475, the Court held: "No alien has the slightest right to naturalization unless all statutory requirements are complied with; and every certificate of citizenship must be treated as granted upon condition that the Government may challenge it as provided in § 15 and demand its cancellation unless issued in accordance with such requirements." Renunciation of all allegiance to the German Reich was an express statutory condition precedent to the petitioner's valid acquisition of citizenship. Since this condition was not fulfilled, his citizenship was illegally procured. As has been shown (*supra*, pp. 43–44), the decisions of the lower courts have consistently

[redacted] held that the taking of a false oath of allegiance invalidates a certificate of citizenship thus procured. Congress has often revised the naturalization laws, but it has never undertaken to modify the construction made in these decisions. Indeed, in Section 338 of the Nationality Act of 1940 (8 U. S. C. 738), Congress reenacted Section 15 of the 1906 Act in substantially identical terms. See Appendix, *infra*, pp. 60–61.

The record in the present case shows that the evidence upon which the district court in 1932 admitted him to citizenship consisted only of (a) his petition for naturalization; (b) the affidavits of two witnesses; (c) the recommendation of the examiner that the petitioner, along with 64 others, be granted naturalization; and (d) his oath of allegiance (R. 244–251). We submit that, in these circumstances, his taking a false oath of allegiance constituted a fraud upon the court; and that, in any event, his citizenship was illegally procured in that he did not in fact completely renounce all allegiance to the German Reich. Quite apart from fraud, naturalization is illegally obtained if a condition essential to citizenship, namely, renunciation of all allegiance to the country of the petitioner's origin and the bearing of true faith and allegiance to the United States, is not satisfied. Cf. *Schwinn* v. *United States*, 112 F. (2d) 74 (C. C. A. 9), affirmed 311 U. S. 616; *United States* v. *Herberger*, 272 Fed. 278, 291 (W. D. Wash.); *United States* v. *Fischer*,

48 F. Supp. 7, 8 (S. D. Fla.); *United States* v. *Jogwick*, 51 F. Supp. 2, 5 (N. D. W. Va.); *United States* v. *Mickley*, 44 F. Supp. 735, 738 (E. D. Mich.). The certificate of naturalization procured by the petitioner was a nullity, and its cancellation was plainly authorized by the statute.

B. THE DOCTRINE OF RES JUDICATA DOES NOT PRECLUDE CANCELLATION OF A FRAUDULENTLY AND ILLEGALLY PROCURED CERTIFICATE OF NATURALIZATION

The petitioner in his brief (pp. 32–39) makes an argument, apparently suggested by the doubts expressed in the concurring opinions of Mr. Justice Douglas and Mr. Justice Rutledge in the *Schneiderman* case (320 U. S. at 161–170), that the doctrine of *res judicata* precludes cancellation of the petitioner's citizenship on the ground of fraud or illegality, and that legislative authorization of such a remedy is an unconstitutional interference with the judicial power. We submit, however, that the doctrine of *res judicata* is inapplicable to the facts of this case; that no principle is more firmly established in the law than that one who fraudulently induces a court to enter judgment in his favor cannot invoke the doctrine of *res judicata* for the purpose of preventing the court from setting aside the judgment as having been fraudulently obtained; and that, in any event, the statute as applied here does not unconstitutionally interfere with the judicial function reserved to the federal courts by Article III of the Constitution.

It is well settled that a judgment obtained through practice of fraud on a court may subsequently be set aside on that ground. *Marshall* v. *Holmes*, 141 U. S. 589; *Simon* v. *Southern Railway*, 236 U. S. 115; *Trenies* v. *Sunshine Min. Co.*, 308 U. S. 66, 78. *United States* v. *Throckmorton*, 98 U. S. 61, and *Moffat* v. *United States*, 112 U. S. 24, relied upon by the petitioner in his brief (p. 32), are relevant here only insofar as they hold that the issue of fraud can itself become *res judicata* when it has been litigated and adjudicated in the judgment sought to be set aside. But where, as in the present case, the issues of fraud and illegality were not litigated in the prior proceeding, the judgment is *res judicata* "only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered", *Cromwell* v. *County of Sac*, 94 U. S. 351, 353; *Mercoid Corp.* v. *Mid-Continent Investment Co.*, 320 U. S. 661, 671, and cases there cited. As the record here shows, the petitioner was one of sixty-five persons naturalized simultaneously in a single order of the court, all having been recommended for naturalization by an examiner of the Bureau of Naturalization (R. 248–251). The issues of fraud and illegality were neither tendered by the Government nor determined by the Court. Manifestly, this case does not fall within the scope of the doctrine of *res judicata*.

Even prior to the enactment of the Act of June 29, 1906, which explicitly conferred jurisdiction in the district courts to cancel judgments of naturalization on the ground of fraud, both federal and state courts had exercised a similar jurisdiction. As Judge Hough stated in *United States* v. *Mansour,* 170 Fed. 671, 675–676 (S. D. N. Y., 1908), "courts granting naturalization have for generations revoked or canceled their own grants or judgments, when convinced that they have been imposed upon, or deceived * * *."

In his annual message to Congress on December 1, 1890, President Harrison stated as follows: "The vacation by judicial decrees of fraudulent certificates of naturalization, upon bills in equity filed by the Attorney-General in the circuit court of the United States, is a new application of a familiar equity jurisdiction. Nearly one hundred such decrees have been taken during the year, the evidence disclosing that a very large number of fraudulent certificates of naturalization have been issued." And on May 29, 1905, a Special Assistant United States Attorney reported to the Attorney General that during the preceding two years 1,916 fraudulently obtained certificates of citizenship had been cancelled through the efforts of the United States Attorney for the Southern District of New York. See *Report to the President of the Commission on Naturalization,* H. Doc. No. 46, 59th Cong., 1st

Sess., Appendix D, p. 76. The cases in which, prior to the Act of June 29, 1906, naturalization was cancelled on account of fraud are collected in a report submitted to Congress by Secretary of State Elihu Root on December 18, 1906 (H. Doc. No. 326, 59th Cong., 2d sess., p. 131 *et seq.*) See, *e. g.*, *In re McCoppin*, 15 Fed. Cas. 1300 (Case No. 8713, C. C., D. Cal., 1869); *United States* v. *Norsch*, 42 Fed. 417 (E. D. Mo., 1890); *United States* v. *Kornmehl*, 89 Fed. 10 (D. N. J., 1898).[11]

The question of the constitutionality of Section 15 of the 1906 Act first came before this Court in *Johannessen* v. *United States*, 225 U. S. 227. The Court there specifically rejected the contention that the doctrine of *res judicata* entitled the petitioner to retain his citizenship: "An alien has no moral or constitutional right to retain the privileges of citizenship if, by false evidence or the like, an imposition has been practiced upon the court, without which the certificate of citizenship could not and would not have been issued." (225 U. S. at 241). This ruling was reaffirmed in *Luria* v. *United States*, 231 U. S. 9, and *United States* v. *Ginsberg*, 243 U. S. 472, 475. In the

[11] For instances in which state courts, both before and after the 1906 Act, have recognized the inherent power of a court of equity to set aside a judgment of naturalization procured by fraud, see *Ting* v. *U. S. District Attorney*, 148 Cal. 773 (1906); *In re O'Sullivan*, 137 Mo. App. 214 (1909); *Commonwealth* v. *Paper*, 1 Brews. (Pa.) 263 (1868); *Marchus's Naturalization*, 237 Pa. St. 132 (1912).

next case which arose under the Act, *United States* v. *Ness*, 245 U. S. 319, the United States sought to set aside the petitioner's citizenship as having been illegally procured because of his failure to file the required certificate of arrival. The petitioner pleaded *res judicata* since the Government concededly had appeared in opposition to the granting of naturalization and had unsuccessfully urged that the petition be denied on the same ground. It was held, nevertheless, that the doctrine of *res judicata* was inapplicable to cancellation proceedings brought under the statute. Speaking for a unanimous Court, Mr. Justice Brandeis said that the provisions of the Act of 1906 "were designed to afford cumulative protection against fraudulent or illegal naturalization" (245 U. S. at 327). In *Maney* v. *United States*, 278 U. S. 17, the Court again reaffirmed the doctrine that *res judicata* is inapplicable to these proceedings. In the latter case, Mr. Justice Holmes emphasized the special character of cancellation proceedings as being "enough to warrant a special treatment" (278 U. S. at 23).

In the *Schneiderman* case the opinion of the Court stressed the basic similarity of denaturalization proceedings to suits to annul fraudulent land grants and letters of patent. 320 U. S. at 125; and see *Johannessen* v. *United States*, 225 U. S. 227, 238; *Tutun* v. *United States*, 270 U. S. 568. Accordingly, the special rule as to burden of proof applicable in the latter cases was ex-

tended to denaturalization proceedings. We believe that, by parity of reasoning, the well-settled principle that *res judicata* does not preclude cancellation of fraudulently and illegally procured public land grants and letters of patent (see *United States* v. *Minor*, 114 U. S. 233; *Colorado Coal & Iron Co.* v. *United States*, 123 U. S. 307; *United States* v. *Bell Telephone Company*, 128 U. S. 315; *Moffat* v. *United States*, 112 U. S. 24; *United States* v. *San Jacinto Tin Co.*, 125 U. S. 273; *Maxwell Land-Grant Case*, 121 U. S. 325), should also be applicable in denaturalization proceedings.[12]

As has been shown, Congress in 1926 rejected as impractical and undesirable a system under which the district judges were called upon to investigate the facts relating to each application for naturalization. It chose instead to adopt a procedure which was predominantly administrative in character, at least in its first stage, thus facilitating the expeditious disposition of a great volume of naturalzation cases without imposing a needless burden upon the district courts. Congress plainly regarded the remedy of the Government to obtain cancellation of fraudulently and illegally procured certificates of naturalization as

[12] That the doctrine of *res judicata* does not inhere in the judicial function is evidenced by the line of decisions establishing that the principle does not apply to a decision on *habeas corpus* refusing to discharge a prisoner. See *Waley* v. *Johnston*, 316 U. S. 101, 105; *Salinger* v. *Loisel*, 265 U. S. 224, 230.

an essential part of the scheme of naturalization which it adopted. If the doctrine of *res judicata* should be held applicable here, such a remedy would for practical purposes be wholly ineffective. Congress would thus be compelled to abandon a system of naturalization which has been found to be most practicable and desirable, in the interests of the applicants as well as the courts, and to reestablish a procedure which was tried for many years and was found unsatisfactory.

C. CANCELLATION OF THE PETITIONER'S CITIZENSHIP DOES NOT INVOLVE ABRIDGEMENT OF HIS CONSTITUTIONAL RIGHT OF FREE SPEECH

To cancel the petitioner's citizenship on the ground that it was fraudulently and illegally procured is not to penalize him for the expression of unpopular political beliefs. He is not in any sense being punished for his lack of allegiance to the United States; he is merely being deprived of that to which he was never lawfully entitled. The proceeding is equitable in nature, not penal. *Luria* v. *United States*, 231 U. S. 9, 27. It cannot be doubted that Congress can constitutionally insist upon allegiance to the United States as a condition to citizenship. See *United States* v. *Macintosh*, 283 U. S. 605, 616; *Turner* v. *Williams*, 194 U. S. 279, 293. Congress could have dispensed with such a requirement, but it was under no constitutional compulsion to do so. The standard of allegiance necessarily involves inquiry into

convictions which might be characterized as political in nature. While Congress could not, consistently with the prohibitions of the First Amendment, proscribe expressions of convictions, it could certainly make such expressions relevant in determining whether the test of allegiance has been satisfied. This is the limited extent to which the petitioner's utterances have legal significance in the case at bar. We submit that, obviously, no infringement of his undoubted constitutional right of free speech is involved.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted.

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APRIL 1944.

APPENDIX

Statutory Provisions

Sec. 15 of the Act of June 29, 1906, in its amended form, upon the date of the petitioner's naturalization, provided:

> It shall be the duty of the United States district attorneys for the respective districts, or the Commissioner or Deputy Commissioner of Naturalization, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. * * * (Act of June 29, 1906, c. 3592, sec. 15, 34 Stat. 601, as amended, 8 U. S. C. 405 (1934 ed).

Sec. 338 of the Nationality Act of 1940, c. 876, 54 Stat. 1140, 1158 (8 S. C. 738) provides:

> (a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting

such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.

Sec. 4 of the Act of June 29, 1906, upon the date of the petitioner's naturalization, provided in part:

> He [any alien] shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same. (Act of June 29, 1906, c. 3592, sec. 4, 34 Stat. 597, formerly 8 U. S. C. 381 (1926 ed.).)

The Act of June 8, 1926, c. 502, 44 Stat. 709, amended Section 4 of the 1906 Act by adding thereto the following provisions:

> Fourteenth. (a) The judge of any United States district court, or the senior judge of such court if there are more judges than one, is hereby authorized, in his discretion, to designate one or more examiners or officers of the Bureau of Naturalization (including the Naturalization Servive) serving as such examiner or officer within the territorial jurisdiction of such court, to conduct preliminary hearings upon petitions for naturalization to such

court, and to make findings and recommendations thereon. For such purposes any such designated examiner or officer is hereby authorized to take testimony concerning any matter touching or in any way affecting the admissibility of any petitioner for naturalization, to subpoena witnesses, and to administer oaths, including the oath of the petitioner to his petition and the oath of his witnesses.

(b) The findings of any such designated examiner or officer upon any such preliminary hearing shall be submitted to the court at the final hearing upon the petition required by section 9, with a recommendation that the petition be granted or denied or continued, with the reasons therefor. Such findings and recommendations shall be accompanied by duplicate lists containing the names of the petitioners, classified according to the character of the recommendations, and signed by the designated examiner or officer. The judge to whom such findings and recommendations are submitted shall by written order approve such recommendations with such exceptions as he may deem proper, by subscribing his name to each such list when corrected to conform to his conclusions upon such recommendations. One of such lists shall thereafter be filed permanently of record in such court and the duplicate list shall be sent by the clerk of such court to the Commissioner of Naturalization.

(c) The provisions of section 9 requiring the examination of the petitioner and witnesses under oath before the court and in the presence of the court shall not apply in any case where a designated examiner or officer has conducted the preliminary

> hearing authorized by this subdivision; except that the court may, in its discretion, and shall, upon demand of the petitioner, require the examination of the petitioner and the witnesses under oath before the court and in the presence of the court.

Prior to the Act of March 2, 1929, c. 536, § 6 (b), 45 Stat. 1513, sec. 4 of the 1906 Act provided in part:

> It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record. (Act of June 29, 1906, c. 3592, sec. 4, 34 Stat. 598, formerly 8 U. S. C. 382 (1926 ed.).)

The Act of March 2, 1929, c. 536, § 6 (b), 45 Stat. 1513 (8 U. S. C. 382 (1934.)), amended the above provision to read as follows:

> No alien shall be admitted to citizenship unless (1) immediately preceding the

date of his petition the alien has resided continuously within the United States for at least five years and within the county where the petitioner resided at the time of filing his petition for at least six months, (2) he has resided continuously within the United States from the date of his petition up to the time of his admission to citizenship, and (3) during all the periods referred to in this subdivision he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

U. S. GOVERNMENT PRINTING OFFICE: 1944

SUPREME COURT OF THE UNITED STATES.

No. 493.—October Term, 1943.

Carl Wilhelm Baumgartner, Petitioner, *vs.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[June 12, 1944.]

Mr. Justice Frankfurter delivered the opinion of the Court.

On September 26, 1932, the United States District Court for the Western District of Missouri entered its order admitting Baumgartner to citizenship and issued a certificate of naturalization to him. Almost ten years later, on August 21, 1942, the United States brought this suit under § 338 of the Nationality Act of 1940 (54 Stat. 1137, 1158, 8 U. S. C. § 738) to set aside the naturalization decree and cancel the certificate.[1] The District Court entered a decree for the Government, 47 F. Supp. 622, which the Circuit Court of Appeals for the Eighth Circuit, with one judge dissenting, affirmed. 138 F. 2d 29. We brought the case here because it raises important issues in the proper administration of the law affecting naturalized citizenship. 321 U. S. .

As a condition to receiving his American citizenship, Baumgartner, like every other alien applying for that great gift, was required to declare on oath that he renounced his former allegiance, in this case to the German Reich, and that he would "support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic"; and that he would "bear true faith and allegiance to the same". That he did not truly and fully renounce his allegiance to Germany and that he did not in fact intend to support the Constitution and laws of the United States and to give them true faith and

[1] Section 338 (a) provides: "It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

allegiance, are the charges of fraud and illegality on which his citizenship is claimed forfeit.

As is true of the determination of all issues of falsity and fraud, the case depends on its own particular facts. But the division of opinion among the judges below makes manifest that facts do not assess themselves and that the decisive element is the attitude appropriate for judgment of the facts in a case like this. The two lower courts have sustained the Government's claim that expressions by Baumgartner, in conversations with others and in the soliloquies of a diary, showed that he consciously withheld complete renunciation of his allegiance to Germany and entertained reservations in his oath of allegiance to this country, its Constitution and its laws. What follows is a fair summary of the evidence on which this finding rests, putting the Government's case in its most favorable light.

Baumgartner was born in Kiel, Germany, on January 20, 1895, and brought up in modestly comfortable circumstances. He received a classical high-school education, which he completed in time to enter the German army in 1914. He was commissioned a second lieutenant in 1917, and shortly thereafter he was captured by the British and confined in England until November, 1919. Upon his return to Germany, Baumgartner studied at the University of Darmstadt, from which he was graduated in 1925 as an electrical engineer. Thereupon he was employed by a public utility company until January, 1927, when he left for the United States. Shortly before, Baumgartner had married, and his wife followed him to this country later in the same year.

For about three months, Baumgartner stayed with friends in Illinois, and then came to Kansas City, Missouri, where he was employed by the Kansas City Power and Light Company. He continued in its employ down to the time of this suit. The man to whom he reported to work testified that after about two days on the job, Baumgartner began to discuss the political scene in Germany, to express a lack of enthusiasm for the then German Government, and to extol the virtues of Hitler and his movement. Baumgartner spoke so persistently about the superiority of German people, the German schools, and the engineering work of the Germans, that he aroused antagonism among his co-workers and was transferred to a different section of the plant.

There was testimony that in 1933 or 1934 Mrs. Baumgartner's mother visited this country, and that after this visit, Baumgart-

ner, beginning in 1934, "praised the work that Hitler was doing over there in bringing Germany back, on repeated occasions." Evidence of statements made by Baumgartner over a period of about seven years beginning in 1933 indicated oft-repeated admiration for the Nazi Government, comparisons between President Roosevelt and Adolf Hitler which led to conclusions that this country would be better off if run as Hitler ran Germany, "that regimentation, as the Nazis, formed it [sic] was superior to the democracy", and that "the democracy of the United States was a practical farce". One witness of German extraction testified that Baumgartner told him he was "a traitor to my country" because of the witness's condemnation of Hitler. Baumgartner made public speeches on at least three occasions before businessmen's groups, clubs, and the like in which he told of the accomplishments of the Nazi Government and indicated that "he would be glad to live under the regime of Hitler."

During 1937 and 1938, Baumgartner conducted a Sunday school class, and former students testified that the discussion in class turned to Germany very frequently, that Baumgartner indicated that his students could get a fairer picture of conditions in Germany from the German radio, and that Germany was justified in much of what it was doing. The school superintendent also testified that he had received complaints that Baumgartner was preaching Nazism.

In 1938 Baumgartner resigned from the Country Club Congregational Church in Kansas City because he objected to the injection of politics into the sermons. In May of the next year his wife and their three children, who had been born in Kansas City, went to Germany to visit Mrs. Baumgartner's parents. One witness testified that Baumgartner explained this trip in part by saying that "he wanted the children to be brought up in German schools", and when war broke out in September, 1939, Mrs. Baumgartner cabled for money to return but Baumgartner could not raise the necessary funds and felt that his family would be as safe in Germany as here. Baumgartner remarked that he wanted his wife to come back from Germany, when she did, on a German boat. One of Baumgartner's neighbors testified that in a conversation in December, 1939, Baumgartner, asked about his thirteen-year-old daughter then in Germany, said sarcastically: "Edith has done a very un-American thing, she has joined the Nazi Youth Movement."

There was testimony that Baumgartner justified the German invasions in the late 1930's, and announced, when Dunkerque fell, that "Today I am rejoicing." One witness testified that Baumgartner told him that he "belonged to an order called the so-called 'Bund'", and the diary which Baumgartner kept from December 1, 1938, to the summer of 1941 reveals that he attended a meeting of the German Vocational League where the German national anthem was sung and "everyone naturally arose and assumed the usual German stance with the arm extended to give the National Socialist greeting". Other diary entries reflect violent anti-semitism, impatience at the lack of pro-German militancy of German-Americans, and approval of Germans who have not "been Americanized, that is, ruined."[2] Finally, Baumgartner replied in the affirmative to the trial judge's question: "was your attitude towards the principles of the American government in 1932 when you took the oath the same as it has been ever since?"

That the concurrent findings of two lower courts are persuasive proof in support of their judgments is a rule of wisdom in judicial administration. In reaffirming its importance we mean to pay more than lip service. But the rule does not relieve us of the task of examining the foundation for findings in a particular case. The measure of proof requisite to denaturalize a citizen was before this Court in *Schneiderman* v. *United States*, 320 U. S. 118. It was there held that proof to bring about a loss of citizenship must be clear and unequivocal. We cannot escape the conviction that the case made out by the Government lacks that solidity of proof which leaves no troubling doubt in deciding a question of such gravity as is implied in an attempt to reduce a person to the status of alien from that of citizen.

The phrase "finding of fact" may be a summary characterization of complicated factors of varying significance for judgment

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[2] The following are some excerpts from Baumgartner's diary: "The only ones who have any ideas here are the Jews and their ideas are vile, mean, and malicious. . . . Today the President of the United States delivered his message to the new Congress. The speech was a horrible mixture of war agitation and laughable talk about the freedom of press, speech, etc., which this country allegedly has and which has to be protected with guns. . . . we drank a bottle of Pschorr brew together to the welfare and the future of Germany. The Jewish American English fortress in the heart of Central Europe is fallen. A terrible defeat for the above named powers who will probably have a difficult time recovering from this. . . . Listened to Hitler's speech from the Kroll's Opera House on 15.2. It was wonderful as usual. . . . The whole country is under the influence of the insane actions of the Government in Washington which have the character of wild, unbridled despotism."

such a "finding of fact" may be the ultimate judgment on a mass of details involving not merely an assessment of the trustworthiness of witnesses but other appropriate inferences that may be drawn from living testimony which elude print. The conclusiveness of a "finding of fact" depends on the nature of the materials on which the finding is based. The finding even of a so-called "subsidiary fact" may be a more or less difficult process varying according to the simplicity or subtlety of the type of "fact" in controversy. Finding so-called ultimate "facts" more clearly implies the application of standards of law. And so the "finding of fact" even if made by two courts may go beyond the determination that should not be set aside here. Though labeled "finding of fact", it may involve the very basis on which judgment of fallible evidence is to be made. Thus, the conclusion that may appropriately be drawn from the whole mass of evidence is not always the ascertainment of the kind of "fact" that precludes consideration by this Court. See, *e. g.*, *Beyer* v. *LeFevre*, 186 U. S. 114. Particularly is this so where a decision here for review cannot escape broadly social judgments—judgments lying close to opinion regarding the whole nature of our Government and the duties and immunities of citizenship. Deference properly due to the findings of a lower court does not preclude the review here of such judgments. This recognized scope of appellate review is usually differentiated from review of ordinary questions of fact by being called review of a question of law, but that is often not an illuminating test and is never self-executing. Suffice it to say that emphasis on the importance of "clear, unequivocal, and convincing" proof, see *Schneiderman* v. *United States*, *supra* at 125, on which to rest the cancellation of a certificate of naturalization would be lost if the ascertainment by the lower courts whether that exacting standard of proof had been satisfied on the whole record were to be deemed a "fact" of the same order as all other "facts", not open to review here.

The gravamen of the Government's complaint and of the findings and opinions below is that Baumgartner consciously withheld allegiance to the United States and its Constitution and laws; in short, that Baumgartner was guilty of fraud. To prove such intentional misrepresentation evidence calculated to establish only the objective falsity of Baumgartner's oath was adduced. Nothing else was offered to show that Baumgartner was aware

of a conflict between his views and the new political allegiance he assumed. But even if objective falsity as against perjurious falsity of the oath is to be deemed sufficient under §388(a) of the Nationality Act of 1940 to revoke an admission to citizenship, it is our view that the evidence does not measure up to the standard of proof which must be applied to this case.

We come then to a consideration of the evidence in the context in which that evidence is to be judged. Congress alone has been entrusted by the Constitution with the power to give or withhold naturalization and to that end "to establish a uniform Rule of Naturalization". Art. I, § 8, Clause 4. In exercising its power, Congress has authorized the courts to grant American citizenship only if the alien has satisfied the conditions imposed by Congress for naturalization. There is no "right to naturalization unless all statutory requirements are complied with". *United States* v. *Ginsberg*, 243 U. S. 472, 475. And so "If a certificate is procured when the prescribed qualifications have no existence in fact, it may be cancelled by suit." *Tutun* v. *United States*, 270 U. S. 568, 578. From the earliest days of the Republic, Congress has required as a condition of citizenship that the alien renounce his foreign allegiance and swear allegiance to this country and its Constitution. Act of January 29, 1795, 1 Stat. 414. By this requirement Congress has not used meaningless words. Nor, on the other hand, has it thereby expressed a narrow test or formula susceptible of almost mechanical proof, as is true of other prerequisites for naturalization—period of residence, documentation of arrival, requisite number of sponsoring witnesses and the like. Allegiance to this Government and its laws, is a compendious phrase to describe those political and legal institutions that are the enduring features of American political society. We are here dealing with a test expressing a broad conception—a breadth appropriate to the nature of the subject matter, being nothing less than the bonds that tie Americans together in devotion to a common fealty. The spacious scope of this conception was expressed by this Court in stating that the Constitution "was made for an undefined and expanding future, and for a people gathered and to be gathered from many nations and of many tongues". *Hurtado* v. *California*, 110 U. S. 516, 530-31, and again, "when we are dealing with words that also are a constituent act, like the Constitution of the

United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to prove that they created a nation. The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago." *Missouri* v. *Holland*, 252 U. S. 416, 433.

To ascertain fulfilment of a test implying so expansive a reach presents difficult and doubtful problems even for judges presumably well-trained in the meaning of our country's institutions and their demands from its citizens. "Under our Constitution, a naturalized citizen stands on an equal footing with the native citizen in all respects, save that of eligibility to the Presidency." *Luria* v. *United States*, 231 U. S. 9, 22. One of the prerogatives of American citizenship is the right to criticize public men and measures—and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderation. Our trust in the good sense of the people on deliberate reflection goes deep. For such is the contradictoriness of the human mind that the expression of views which may collide with cherished American ideals does not necessarily prove want of devotion to the Nation. It would be foolish to deny that even blatant intolerance toward some of the presuppositions of the democratic faith may not imply rooted disbelief in our system of government.

Forswearing past political allegiance without reservation and full assumption of the obligations of American citizenship are not at all inconsistent with cultural feelings imbedded in childhood and youth.[3] And during a period when new strength of the land of one's nativity was flamboyantly exploited before its full

[3] The retention of cultural ties despite the change in "juridical, and political" status has thus been put by a distinguished historian, Gaetano Salvemini, in speaking of his own naturalization: "There is in this country a wider area of generosity than in any other country—at least in Europe. It is this feeling that one is at home here that conquers you little by little. And one fine day you feel that you are no longer an exile but a citizen in your own country. When I took my oath I felt that really I was performing a grand function. I was throwing away not my intellectual and moral but my juristic past. I threw it away without any regret. The Ethiopian war, the rape of Albania, the Spanish crime, and this last idiotic crime, had really broken my connection with sovereigns, potentates, and all those ugly things which are enumerated in the formula of the oath. It is a wonderful formula. Your pledges are

sinister meaning had been adequately revealed even to some Americans of the oldest lineage, such old cultural loyalty, it is well known, was stimulated into confusion of mind and sometimes to expressions of offensive exuberance.

The denial of application for citizenship because the judicial mind has not been satisfied that the test of allegiance has been met, presents a problem very different from the revocation of the naturalization certificate once admission to the community of American citizenship has been decreed. No doubt the statutory procedure for naturalization (§ 334, Nationality Act of 1940), and § 338, with which we are here concerned, "were designed to afford cumulative protection against fraudulent or illegal naturalization." *United States* v. *Ness*, 245 U. S. 319, 327. But relaxation in the vigor appropriate for scrutinizing the intensity of the allegiance to this country embraced by an applicant before admitting him to citizenship is not to be corrected by meagre standards for disproving such allegiance retrospectively. New relations and new interests flow, once citizenship has been granted. All that should not be undone unless the proof is compelling that that which was granted was obtained in defiance of Congressional authority. Non-fulfilment of specific conditions, like time of residence or the required number of supporting witnesses, are easily established, and when established leave no room for discretion because Congress has left no area of discretion. But where the claim of "illegality" really involves issues of belief or fraud, proof is treacherous and objective judgment, even by the most disciplined minds, precarious. That is why denaturalization on this score calls for weighty proof, especially when the proof of a false or fraudulent oath rests predominantly not upon contemporaneous evidence but is established by later expressions of opinion argumentatively projected, and often through the distorting and self-deluding medium of memory, to an earlier year when qualifications for citizenship were claimed, tested and adjudicated.

It is idle to try to capture and confine the spirit of this requirement of proof within any fixed form of words. The exercise of our judgment is of course not at large. We are fully

only juridical and political. You are asked to sever your connections with the government of your former country, not with the people and the civilization of your former country. And you are asked to give allegiance to the Constitution of your adopted country, that is, to an ideal of life." Radcliffe Quarterly, August 1941, pp. 8-9.

mindful that due observance of the law governing the grant of citizenship to aliens touches the very well-being of the Nation. Nothing that we are now deciding is intended to weaken in the slightest the alertness with which admission to American citizenship should be safeguarded. But we must be equally watchful that citizenship once bestowed should not be in jeopardy nor in fear of exercising its American freedom through a too easy finding that citizenship was disloyally acquired. We have sufficiently indicated the considerations of policy, derived from the traditions of our people, that require solid proof that citizenship was falsely and fraudulently procured. These considerations must guide our judicial judgment. Nor can the duty of exercising a judgment be evaded by the illusory definiteness of any formula.

The insufficiency of the evidence to show that Baumgartner did not renounce his allegiance to Germany in 1932 need not be labored. Whatever German political leanings Baumgartner had in 1932, they were to Hitler and Hitlerism, certainly not to the Weimar Republic. Hitler did not come to power until after Baumgartner forswore his allegiance to the then German nation.

Views attributed to Baumgartner as to the superiority of German people, schools, engineering techniques, and the virtues of Hitler, expressed in 1927, when he began to work in Kansas City, are the only direct evidence introduced to show that before he was naturalized in 1932, his attitude precluded his truly or honestly taking an oath of allegiance to the United States, its Constitution and its laws. And his statement at the trial that his attitude toward the principles of the American Government was the same in 1932 as it was at the time of the trial, is hardly significant. For Baumgartner professed loyalty at the trial, denied or explained the few disturbing statements attributed to him by others, and reconciled suspicious diary entries in ways that do not preclude the validity of his oath of allegiance. In short, the weakness of the proof as to Baumgartner's state of mind at the time he took the oath of allegiance can be removed, if at all, only by a presumption that disqualifying views expressed after naturalization were accurate representations of his views when he took the oath. The logical validity of such a presumption is at best dubious even were the supporting evidence less rhetorical and more conclusive. Baumgartner was certainly not shown to have been a party Nazi, and there is only the statement of one witness that

Baumgartner had told him that he was a member of the Bund, to hint even remotely that Baumgartner was associated with any group for the systematic agitation of Nazi views or views hostile to this Government. On the contrary, Baumgartner's diary, on which the Government mainly relies, reveals that when in 1939 he attended a meeting of the German Vocational League at which the Nazi salute was given, it was apparently his only experience with this group, and he went "Since I wanted to see what sort of an organization this Vocational League was".

And so we conclude that the evidence as to Baumgartner's attitude after 1932 affords insufficient proof that in 1932 he had knowing reservations in forswearing his allegiance to the Weimar Republic and embracing allegiance to this country so as to warrant the infliction of the grave consequences involved in making an alien out of a man ten years after he was admitted to citizenship. The evidence in the record before us is not sufficiently compelling to require that we penalize a naturalized citizen for the expression of silly or even sinister-sounding views which native-born citizens utter with impunity. The judgment must accordingly be reversed and the case remanded to the District Court for further proceedings not inconsistent with this opinion.

So ordered.

Mr. Justice MURPHY.

The issue in this case is clear. The Government has sought to set aside petitioner's naturalization certificate because of alleged fraudulent and illegal procurement. It was thus incumbent on the Government to meet the standard of proof laid down by this Court in *Schneiderman* v. *United States*, 320 U. S. 118, 125, 158, by presenting evidence of a "clear, unequivocal, and convincing" character which did not leave "the issue in doubt" as to whether petitioner fraudulently or illegally procured his certificate.

It is true that in the *Schneiderman* case we were met with the issue as to whether the petitioner in that case had illegally procured his naturalization certificate in that he had not, at the time of his naturalization and five years prior thereto, behaved as a person attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States. We expressly did not pass upon the charge of fraud in obtaining

the certificate, which is the primary charge present in this proceeding. But the requirement that the Government prove its case by "clear, unequivocal, and convincing" evidence transcends the particular ground upon which the Government seeks to set aside the naturalization certificate. The decision in the *Schneiderman* case was not merely a decision of an isolated case. It was a formulation by a majority of the Court of a rule of law governing all denaturalization proceedings.[1] That rule of law is equally applicable whether the citizen against whom the proceeding is brought is a Communist, a Nazi or a follower of any other political faith. This requirement of proof was recognized by the court below, 138 F. 2d 29, 34, and by both the Government and the petitioner before us.

In the instant case the failure of the Government to present evidence of a "clear, unequivocal, and convincing" nature that petitioner fraudulently or illegally procured his naturalization certificate in 1932 is patent. With one unimportant exception, the Government proved only that petitioner displayed certain Nazi sympathies and was critical of the United States several years after 1932. There was no competent evidence that he entertained these strong beliefs or that he had any mental reservations in forswearing his allegiance to the Wiemar Republic in 1932.

American citizenship is not a right granted on a condition subsequent that the naturalized citizen refrain in the future from uttering any remark or adopting an attitude favorable to his original homeland or those there in power, no matter how distasteful such conduct may be to most of us. He is not required to imprison himself in an intellectual or spiritual straightjacket; nor is he obliged to retain a static mental attitude. Moreover, he does not lose the precious right of citizenship because he subsequently dares to criticize his adopted government in vituperative or defamatory terms. It obviously is more difficult to conform to the standard set forth in the *Schneiderman* case by mere proof of a state of mind subsequent to naturalization than by proof of facts existing prior to or at the time of naturalization. But that does

[1] The denaturalization proceeding in the *Schneiderman* case was brought under the provisions of § 15 of the Act of June 29, 1906, 34 Stat. 596, 8 U. S. C. § 405. Practically identical provisions are contained in § 338 of the Nationality Act of 1940, 54 Stat. 1137, 1158, 8 U. S. C. § 738, under which the proceeding in the instant case was instituted. See Schneiderman v. United States, 320 U. S. at 121, note 1.

not excuse a failure to meet that standard. The naturalized citizen has as much right as the natural born citizen to exercise the cherished freedoms of speech, press and religion, and without "clear, unequivocal, and convincing" proof that he did not bear or swear true allegiance to the United States at the time of naturalization he cannot be denaturalized. Proper realization of that principle makes clear the error of setting aside petitioner's naturalization certificate on the basis of the facts adduced in this proceeding.

Mr. Justice BLACK, Mr. Justice DOUGLAS and Mr. Justice RUTLEDGE join in this opinion.